

Staff Summary Report

REVISED



Council Meeting Date: 12/04/03

Agenda Item Number: 23

SUBJECT: Request approval of the Purchase and Sale Agreement and Escrow Instructions between Union Pacific Railroad Company and the City of Tempe.

DOCUMENT NAME: 20031204casv04 **TRANSPORTATION PLANNING (1101-01)**

SUPPORTING DOCS: Yes

COMMENTS: Request approval by the City of Tempe to acquire real property interests in the Bridge Property from Union Pacific Railroad Company. The Bridge Property commences at Washington Street and parallels Union Pacific's main railroad line south until it intersects with the Creamery Branch Spur line.

PREPARED BY: Larry Schmalz, Senior Planner (Ext. 8924)

REVIEWED BY: Mary O'Connor, Deputy Public Works Manager (Ext. 8819)

LEGAL REVIEW BY: Marlene A. Pontrelli, City Attorney (Ext. 8120)

FISCAL NOTE: The acquisition cost for this property is \$1,800,000. Funds for this acquisition are budgeted in the Transit program light rail CIP budget, account code 6710-7501.

RECOMMENDATION: Authorize the Mayor to execute the Purchase and Sale Agreement and Escrow Instructions between Union Pacific Railroad Company and the City of Tempe.

ADDITIONAL INFO: The City Council previously authorized staff at the December 19, 2002 Council Meeting, Agenda Item #16 to acquire several properties from Union Pacific Railroad. The acquisition of the Bridge Property is one of the items previously approved, and is the location of the new Light Rail Bridge across Tempe Town Lake.

**PURCHASE AND SALE AGREEMENT
AND ESCROW INSTRUCTIONS**

Between

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

SELLER

And

**CITY OF TEMPE,
a municipal corporation
created under the provisions of Arizona Law**

BUYER

“Bridge Property”

DATED: December 12, 2003

Escrow Holder: Chicago Title Insurance Co.
55 East Thomas Road, Suite 301
Phoenix, AZ 85012
DeWayne C. Huffman, CSEO

Escrow No. 2322857-05

Date of Opening of
Escrow: _____

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

"Bridge Property"

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS is made as of December 12, 2003, ("Execution Date"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Seller"), and CITY OF TEMPE, a municipal corporation created under the provisions of Arizona law ("Buyer").

ARTICLE I PROPERTY

1.1 Property. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller that certain real property and improvements (except improvements not owned by Seller) thereon (the "Property") in Tempe, Maricopa County, Arizona, shown on the print attached hereto as **Exhibit A** and more particularly described in the form of Quit Claim Deed attached hereto as **Exhibit B** (the "Deed"), subject to the terms and conditions set forth herein, any and all applicable federal, state and local laws, orders, rules, regulations, any and all outstanding rights of record or open and obvious on the ground, and all matters set forth in the Deed. The Property shall be conveyed to Buyer subject to the fiber optic easement reservations set forth in **Exhibit B**. Buyer currently is the lessee under two (2) leases affecting the Property (one lease is entirely on the Property; the other lease includes additional property which is not included in this sale). To the extent said leases are on the Property, they shall be deemed to merge into the deed upon Closing.

ARTICLE II PURCHASE PRICE

2.1 Purchase Price. The purchase price for the Property is One Million Eight Hundred Thousand Dollars (\$1,800,000) (the "Purchase Price").

2.2 Payment of Purchase Price. At least one (1) business day prior to the Closing Date (as defined in Section 7.2.1), Buyer shall deliver a sum equal to the Purchase Price, together with Buyer's share of prorations and costs of Escrow as provided in Sections 7.6 through 7.8, such sum to be paid by cash deposit, cashier's or certified check drawn upon a Arizona financial institution or confirmed wire transfer of U.S. funds for immediate credit.

ARTICLE III
"AS IS" SALE; RELEASE; INDEMNITY; INSPECTION

3.1 As Is Sale; Release; Indemnity.

3.1.1 "As Is" Sale. Buyer and its representatives, prior to the Closing Date, will have been afforded the opportunity to make such inspections of the Property and matters related thereto as Buyer and its representatives desire, including, without limitation, governmental laws and regulations to which the Property is subject, and Buyer shall accept the Property upon the basis of its review and determination of the applicability and effect of such laws and regulations.

Buyer acknowledges and agrees that the Property is to be sold and conveyed to and accepted by Buyer in an "as is" condition with all faults, and that the Property has been used as a rail corridor, and portions of the Property have been leased to Buyer for beautification purposes and for the installation, operation and maintenance of a passenger platform. Buyer further acknowledges that Buyer has received, reviewed and is knowledgeable of the matters described in **Exhibit C** attached hereto and made a part hereof (collectively, the "Property Materials"). Except as expressly set forth in this Agreement, Seller makes no representation or warranty as to the accuracy or completeness of said Property Materials. Seller does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property or any of such related matters; in particular, but without limitation, Seller makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health or environmental matters, compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws, codes, ordinances, regulations or requirements (collectively, "Condition of the Property"). Buyer acknowledges that it is entering into this Agreement on the basis of Buyer's own investigation of the physical and environmental conditions of the Property, including the subsurface conditions and Buyer assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation.

3.1.2 Release. Buyer, for itself, its successors and assigns, hereby waives, releases, remises, acquits and forever discharges Seller, Seller's employees, agents, or any other person acting on behalf of Seller, of and from any claims, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines or compensation whatsoever, direct or indirect, which Buyer now has or which Buyer may have in the future on account of or in any way arising out of or in connection with the Condition of the Property, including, without limitation, the known or unknown physical or environmental condition of the Property (including, without limitation, any contamination in, on, under or adjacent to the Property by any Hazardous Materials), or any federal, state or local law, ordinance, rule or regulation applicable thereto, including, without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act. As used in this Agreement, the term "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste regulated by or subject to any local governmental authority, any agency of the State of Arizona, or any other agency of the United States Government, including, without limitation, any material or substance which is (A) defined

as a "hazardous waste", "extremely hazardous waste", "restricted hazardous waste", "hazardous substance", "hazardous material", "toxic material", "toxic substance", or words of similar import, under any federal, state or local governmental rule, regulation, ordinance, statute or act; (B) petroleum and any petroleum by-products; (C) asbestos; (D) urea-formaldehyde foam insulation; or (E) polychlorinated biphenol.

3.1.3 Indemnity. From and after Closing, Buyer shall, to the maximum extent permitted by law, indemnify, defend and save harmless Seller, its affiliates, their employees, agents, officers, successors and assigns, from and against any and all suits, actions, causes of action, legal or administrative proceedings, claims, demands, losses, costs, liabilities and expenses, including attorney's fees, in any way arising out of or connected with changes in the Condition of the Property post-Closing, including, without limitation, changes in the physical or environmental condition of the Property (including, without limitation, any new contamination in, on, under or adjacent to the Property by any Hazardous Materials), or any federal, state or local law, ordinance, rule or regulation applicable thereto, including, without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act. The parties agree that the provisions of this Section 3.1.3 do not apply to any changes in the Condition of the Property post-Closing, if such changes are caused by Seller, its contractors or agents; provided, however, that any such changes caused by Seller, its contractors or agents, shall not affect the enforceability of the release set forth in Section 3.1.2 with respect to the Condition of the Property prior to Closing. The parties further agree that there shall be a rebuttable presumption that all Conditions of the Property have arisen post-Closing.

3.1.4 Survival. The provisions of this Section 3.1 shall survive the Closing and the delivery of the Deed.

3.2 Inspection.

3.2.1 Buyer and its representatives (including architects and engineers) shall have the right to enter upon and inspect the Property and conduct such boundary and topographic surveys, soil and engineering tests and environmental assessments with engineers or consultants licensed in the State of Arizona as Buyer may reasonably require; provided that such inspections and tests shall not materially damage the Property in any respect; provided, further, that such tests and inspections are conducted in accordance with standards customarily employed in the industry and in compliance with all governmental laws, rules and regulations; provided, still further, that Buyer notifies Seller in writing at least forty-eight (48) hours prior to the date that each and every of such testing or inspections are to be conducted on the Property and provides evidence, satisfactory to Seller, of the availability of adequate public liability and other insurance in excess of Buyer's self-insured retention of \$1 million, which insurance shall name Seller as an additional insured. Following each entry by Buyer on the Property, Buyer shall promptly restore the Property to its original condition as existed prior to any such inspections and/or tests. Buyer agrees to indemnify, hold harmless and defend Seller and Seller's affiliates ("Seller's affiliates" means any corporation which directly or indirectly controls or is controlled by or is under common control with Seller), its and their officers, agents, servants and employees against and from any and all liability, loss, cost, damage or expense (including attorneys' fees) of whatsoever

nature growing out of or in connection with personal injury to or death of persons whomsoever (including, without limitation, exposure to hazardous or toxic substances), or loss or destruction of or damage to property whatsoever (including, without limitation, contamination by hazardous or toxic substances and any required testing, removal or cleanup thereof), where such personal injury, death, loss, destruction or damage arises in any way in connection with or incident to the occupation or use of the Property pursuant to this Section 3.2.1 by, or the presence thereon of, Buyer, its officers, agents or employees and occurs from any such cause; provided, however, that this indemnity expressly excludes (i) any loss due to the diminution in value of the Property due to Buyer's discovery of any hazardous materials during its inspection of the Property, and (ii) any liability arising from Buyer's exposure of any existing hazardous materials on the Property to the extent such exposure occurs in the course of Buyer's inspection activities, except to the extent such liability is caused by the negligence or willful misconduct of Buyer. Notwithstanding the foregoing, nothing herein shall limit the Buyer's confidentiality obligations under Section 11.22, nor limit Seller's rights or remedies in the event such obligations are breached. If Buyer should discover any hydrocarbon substances or any other hazardous or toxic substances, asbestos or asbestos-bearing materials, waste or materials subject to legal requirements or corrective action, Buyer shall immediately notify Seller of the same. The indemnity obligations of Buyer under this Section shall survive any termination of this Agreement or the delivery of the Deed and the transfer of title. As a material consideration for Seller entering into this Agreement, Buyer covenants and agrees, upon request by Seller, to promptly deliver to Seller, without charge therefor, the results and copies of any and all surveys, reports, tests, studies or assessments made by or for Buyer, development approvals and correspondence with governmental entities with respect to the Property.

3.2.2 Buyer covenants and agrees not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property for any work done or materials furnished thereon at the instance or request or on behalf of Buyer; and Buyer agrees to indemnify, hold harmless and defend Seller and Seller's affiliates, its and their officers, agents, servants and employees against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished prior to Closing.

ARTICLE IV TITLE TO PROPERTY

4.1 The Deed. At the Closing (as defined in Section 7.2.1), Seller shall execute and deliver to Buyer the Deed to the Property in the form of **Exhibit B** attached hereto.

4.2 Leases and Licenses. At Closing, the leases, licenses, other agreements, and supplements thereto, in the records of Seller's Real Estate Department offices in Omaha, Nebraska, in effect for, or applicable to, the Property as of the date of this Agreement (which leases, licenses and other agreements are identified on **Exhibit B** to **Exhibit D**) (collectively, the "Leases and Licenses") will be assigned by Seller to, and assumed by, Buyer by duly executed Assignment and Assumption Agreement (the "Assignment") in the form attached hereto as **Exhibit D** and hereby made a part hereof.

ARTICLE V
BUYER'S CONDITIONS TO CLOSING

The following are conditions precedent to Buyer's obligation to purchase the Property. If any of the following conditions are not satisfied prior to Closing, Buyer shall not be obligated to purchase the Property.

5.1 Approval of Title.

5.1.1 Buyer may, at its election and sole cost and expense, obtain from Chicago Title Company ("Title Company") a preliminary title report (the "Title Report") on the Property. If Buyer elects to obtain a Title Report, Buyer shall furnish to Seller a copy of same, together with copies of all documents referred to therein, when said Title Report is complete. On or before the end of the Feasibility Review Period ("Title Contingency Date"), Buyer shall deliver written notice to Seller ("Buyer's Title Notice") of all matters of title to the Property disapproved by Buyer ("Disapproved Items"). Buyer's failure to deliver Buyer's Title Notice by the Title Contingency Date shall be deemed to be Buyer's approval of the survey and all existing title matters. If Buyer timely notifies Seller of Disapproved Items and all or some of the Disapproved Items (except for those Disapproved Items, if any, which will be removed upon the Close of Escrow in accordance with the terms of this Agreement) are not cured or deleted as exceptions to title prior to the Closing Date, Buyer shall have the option of either waiving its disapproval of such Disapproved Items and proceeding to the Close of Escrow or terminating this Agreement, in which event the provisions of Section 5.1.3 shall govern. In the event Buyer elects to terminate this Agreement pursuant to this Section 5.1, Buyer shall notify Seller of its election by written notice no later than the Closing Date. Buyer's failure to timely deliver written notice to Seller of its election to terminate shall be deemed to be Buyer's election to proceed to the Close of Escrow and to waive its disapproval of such Disapproved Items. In no event shall Seller's failure to cure or delete as exceptions to the Title Policy any Disapproved Items be deemed to be a breach of this Agreement by Seller or entitle Buyer to any offset against the Purchase Price.

5.1.2 Title Company's willingness to issue a title insurance policy in the amount of the Purchase Price, subject only to such exceptions to title as have been approved by Buyer as provided in Section 5.1.1 above, shall be a condition precedent to Buyer's obligation to purchase the Property.

5.1.3 If this Agreement is terminated pursuant to this Section 5.1, each party shall pay an amount equal to one-half (1/2) of the "cost of cancellation of the Escrow" (as hereinafter defined), and neither party shall have any further rights or obligations under this Agreement (other than the Surviving Obligations as defined in Section 11.26 below). The term "cost of cancellation of the Escrow", as used herein shall be the costs accrued and charged by Escrow Holder and the Title Company for the cancellation of Escrow and the preparation of the Title Report, only.

5.2 Survey. Buyer may elect, at its sole cost and expense, to obtain a survey of the Property. If Buyer so elects, Buyer shall furnish a copy of same to Seller and Title Company when said survey is complete.

5.3 Feasibility Review. Buyer shall have approved, on or before December 12, 2003 ("Feasibility Review Period"), the condition of the Property and the feasibility of Buyer's use thereof. Buyer's feasibility review shall pertain to Buyer's review of and satisfaction with Buyer's engineering studies, soils investigations, environmental assessments, surveys and physical inspection of the Property, and any other matter deemed by Buyer to be relevant to the acquisition of the Property. Buyer may elect, at any time prior to the expiration of the Feasibility Review Period, to terminate this Agreement as a result of Buyer's disapproval of any of the foregoing matters; provided, however, that if Buyer fails to notify Seller and Escrow Holder of Buyer's disapproval of the feasibility by written notice delivered to Seller no later than the date of expiration of the Feasibility Review Period, Buyer shall be deemed to have approved the feasibility and this condition shall be deemed satisfied. If this Agreement is terminated pursuant to the foregoing provisions of this Section 5.3, neither party shall have any further rights or obligations under this Agreement (except for the Surviving Obligations).

5.4 Compliance by Seller. Seller shall have complied with each and every condition and material covenant of this Agreement to be kept or complied with by Seller, and all representations and warranties made by Seller under this Agreement shall be true and correct as of the Closing Date.

5.5 STB Proceedings. No protest, petition to revoke, or similar objection to the transactions contemplated by this Agreement, nor any request for conditions, shall have been filed with the Surface Transportation Board ("STB").

5.6 No Litigation. No court or agency shall have issued an order restraining the consummation of the transactions contemplated by this Agreement, and no litigation affecting the Property shall have been commenced.

5.7 Freight Obligations. Buyer shall have satisfied itself that (a) Buyer shall not be deemed to have undertaken any obligation to provide freight rail services by reason of its acquisition of the Property, and (b) the provisions of the Railway Labor Act will not apply to Buyer solely by reason of its acquisition of the Property.

5.8 Funding Approval. It shall be a condition precedent to Closing that Buyer shall have obtained sufficient funding to close the transactions contemplated by this Agreement, and shall have received all necessary approvals from Buyer's funding agencies.

ARTICLE VI SELLER'S CONDITION TO CLOSING

The following are conditions precedent to Seller's obligation to sell the Property:

6.1 Compliance by Buyer. It is a condition precedent to Seller's obligation to sell the Property that Buyer shall have complied with each and every condition and material covenant of this Agreement to be kept or complied with by Buyer.

ARTICLE VII OPENING AND CLOSING OF ESCROW

7.1 Opening of Escrow and Escrow Instructions. Upon execution of this Agreement, the parties shall deposit three (3) executed counterparts of this Agreement with Escrow Holder and this instrument shall serve as the instructions to Escrow Holder for consummation of the purchase and sale contemplated hereby. Escrow Holder shall insert the date of the Opening of Escrow on the upper right hand corner of the first page of this Agreement on each of the three counterparts. The Opening of Escrow shall be the date upon which Escrow Holder has received executed counterparts of this Agreement from both Buyer and Seller. Escrow Holder shall deliver to both Buyer and Seller a set of counterparts of the Agreement executed by Buyer, Seller and Escrow Holder and shall retain a set in Escrow. Escrow Holder shall only be responsible for undertaking such matters in connection with the Closing as are specifically provided for herein or in any additional or supplementary escrow instructions delivered by the parties.

7.2 Closing.

7.2.1 Closing Date. The consummation of the transaction contemplated by this Agreement and recording of the Deed (the "Closing" or "Close of Escrow") shall occur and delivery of all items to be made at the Closing under the terms of this Agreement shall be made on or before December 19, 2003 (the "Closing Date").

7.2.2 Preclosing Conditions. Provided that Escrow Holder can comply with these instructions, that Escrow Holder has received the deliveries described in Sections 7.3 and 7.4 below, that Escrow Holder has not received prior written notice from a party that any condition to such party's obligations has not been fulfilled, or that Buyer has elected to terminate its rights and obligations hereunder pursuant to Article V, or Seller has elected to terminate its rights and obligations hereunder pursuant to Article VI, then Escrow Holder is authorized and instructed to (a) record the Deed, (b) deliver the Purchase Price to Seller, less prorations and costs of Escrow in accordance with Section 7.6 below, (c) deliver conformed copies of the recorded Deed, and fully executed counterparts of the Assignment, COM Agreement (defined in Section 7.3.3), and Right of Entry License (defined in Section 7.3.4), to Buyer and Seller, and (d) deliver the closing statements to Buyer and Seller in accordance with Section 7.2.4 below.

7.2.3 Failure to Close. If the Closing does not occur on or before the Closing Date, then either party not then in default may elect to terminate this Agreement and cancel Escrow by giving written notice of such termination and cancellation to the other party and to Escrow Holder. In the event of such termination and cancellation, neither party shall have any further obligations hereunder (other than the Surviving Obligations), and all documents and other instruments shall be returned to the party depositing the same into Escrow. In the event neither party is in default, the cost of cancellation of Escrow shall be shared equally between

Buyer and Seller. In the event only one of the parties hereto is in default or if this Agreement expressly so provides, then such defaulting party shall pay for the entire cost of cancellation of Escrow. The termination of this Agreement and cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights, as said rights may be limited by the terms contained in this Agreement, that Buyer or Seller may have against each other arising out of this Agreement and the Escrow. If neither party so elects to terminate this Agreement and cancel Escrow, Escrow Holder shall close the Escrow as soon as possible.

7.2.4 Notification; Closing Statements. If Escrow Holder cannot comply with the instructions herein and to be provided, Escrow Holder is not authorized to cause the recording of the Deed or close this Escrow. If Escrow Holder is unable to cause the recording of the Deed, Escrow Holder shall notify Gregg Larsen at 402-997-3552 and Larry Schmalz at 480-350-8924, without delay. If Escrow Holder is able to comply with the instructions herein and to be provided, immediately after the Closing, Escrow Holder shall deliver to Seller at the addresses provided in Section 11.9 a true, correct and complete copy of the Seller's closing statement, in the form customarily prepared by Escrow Holder and shall deliver to Buyer at the address provided in Section 11.9 a true, correct and complete copy of Buyer's closing statement, in the form customarily prepared by Escrow Holder.

7.3 Deliveries by Seller. Not later than one (1) business day prior to the Closing Date, Seller shall deposit with Escrow Holder the following items:

7.3.1 Deed. The Deed in the form of **Exhibit B**, duly executed and acknowledged by Seller.

7.3.2 Assignment. The Assignment in the form of **Exhibit D** duly executed by Seller.

7.3.3 COM Agreement. The Construction, Operations and Maintenance Agreement ("COM Agreement") in the form of **Exhibit F**, duly executed by Seller.

7.3.4 Joint Right of Entry License. The Joint Right of Entry License ("Right of Entry License") in the form of **Exhibit E to Exhibit F**, duly executed by Seller.

7.3.5 Intentionally Omitted.

7.3.6 Non-Foreign Status Certificate. A Non-Foreign Status Certificate pursuant to Internal Revenue Code Section 1445 duly executed by Seller in the form of **Exhibit E**.

7.3.7 Other Documents. Any other documents, instruments, data, records, correspondence or agreements called for hereunder which have not previously been delivered.

7.4 Deliveries by Buyer. Not later than one (1) business day prior to the Closing Date (or such other time specified below), Buyer shall deposit with Escrow Holder the following items:

7.4.1 Purchase Price. A sum in an amount equal to the Purchase Price, plus Buyer's share of the prorations and costs of Escrow which are required pursuant to this Article to close Escrow.

7.4.2 Assignment. The Assignment in the form of **Exhibit D** duly executed by Buyer.

7.4.3 COM Agreement. The COM Agreement in the form of **Exhibit F**, duly executed by Buyer.

7.4.4 Joint Right of Entry License. The Right of Entry License in the form of **Exhibit E to Exhibit F**, duly executed by Buyer.

7.4.5 Intentionally Omitted.

7.4.6 Other Documents. Any other documents, instruments, data, records, correspondence or agreements called for hereunder which have not been previously delivered.

7.5 Other Instruments. Seller and Buyer shall each deposit such other instruments and take such other actions as are reasonably required by Escrow Holder or otherwise required to close the Escrow and consummate the purchase of the Property in accordance with the terms hereof.

7.6 Prorations.

7.6.1 All expenses of the Property, including, without limitation, real property taxes, special taxes, assessments and utility fees and/or deposits, and rentals under any leases shall be prorated and apportioned between Buyer and Seller as of 12:01 a.m. on the Closing Date, so that Seller bears all expenses with respect to the Property through and including the date immediately preceding the Closing Date. Seller and Buyer hereby agree that any of the aforesaid prorations which cannot be calculated accurately as of the Closing Date shall be prorated on the basis of the parties' reasonable estimates, and shall be recomputed between Seller and Buyer when actual tax statements for the year of Closing are received, and either party owing the other party a sum of money based on such subsequent proration adjustment shall promptly pay said sum to the other party, and, if payment is not made within ten (10) days after delivery of a bill therefor, shall pay interest thereon, at the lesser of the rate of ten percent (10%) per annum or the highest rate permitted by law, from the Closing Date to the date of payment. Seller shall be responsible for such taxes or assessments (including, without limitation, possessory interest taxes, if any) as may separately be levied on any rights retained by Seller under Section 1.1. The provisions of this Section 7.6.1 shall survive the Closing and the delivery of the Deed.

7.6.2 All rents, common area maintenance charges, other amounts paid by a tenant of the Property, and other income from the Property attributable to periods prior to the Closing shall be retained by Seller, and all such income attributable to and collected for periods subsequent to the Closing shall be credited to Buyer. Buyer shall have no obligation to collect

any rents or other charges due but uncollected prior to such Closing. All tenant security deposits, if any, shall be transferred to Buyer upon the Closing, and Buyer shall execute a document acknowledging receipt of such deposits and agreeing to hold them in accordance with the terms in the applicable Leases.

7.7 Special Taxes, Bonds or Assessments. If, at the time of Closing, any portion of the Property is affected by an assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien, then such installment shall be prorated as of 12:01 a.m. on the Closing Date. All installments not then yet due whether or not the same have been prepaid shall not be prorated and Buyer shall assume such bonds or assessments. Any prepaid assessments made in advance of its due date shall be credited to Seller. In addition, Buyer shall assume any and all future bonds, assessments, special taxes, fees or charges applicable to the Property for liabilities now or hereafter imposed by any governmental authority (collectively referred to as "Governmental Requirements") including, without limitation, any such Governmental Requirements imposed by the City of Tempe, and those for (i) local assessment or improvement districts, (ii) any special tax assessments, (iii) traffic mitigation improvements (iv) park and recreation fees, and/or (v) any other public facility infrastructure or traffic mitigation required or imposed by the City of Tempe. Buyer shall assume all such bonds or future assessments without offset or adjustment.

7.8 Costs and Expenses. The costs and expenses of Escrow upon Close of Escrow shall be allocated as follows: Buyer shall pay the premium for any title insurance desired by Buyer and all other standard costs and charges of the Escrow.

7.9 Disbursement of Funds. On the Close of Escrow, Escrow Holder shall disburse the Purchase Price less Seller's share of prorations as determined pursuant to Section 7.6 in immediately available funds, and, unless otherwise instructed by Seller, Escrow Holder shall cause such funds to be sent by wire transfer as follows:

US Bank
Omaha, Nebraska 68102
ABA Routing #104000029
For Credit Union Pacific Railroad Company
Account No. 148744571164

Such funds are to be wired as of 11:00 a.m. P.S.T. on such date in order that such funds may be received by Seller on the Close of Escrow; provided, however, that if such funds cannot be wired to Seller on the Close of Escrow, Escrow Holder shall, unless otherwise directed in writing by Seller, invest the funds overnight in an interest-bearing account.

7.10 Delivery of Documents. Upon the Close of Escrow all instruments and documents shall be delivered forthwith to each party's attorney specified in Section 11.9, and if no attorney is specified, then to such party directly. Escrow Holder shall forthwith deliver to the party entitled thereto the recorded originals of such instruments or documents upon Escrow Holder's receipt of the same.

7.11 Supplemental Taxes. Seller and Buyer acknowledge that the Property may be subject to supplemental taxes due as a result of change of ownership taking place through this Escrow. Any necessary adjustment due either party on receipt of a supplemental tax bill will be made by the parties outside of this Escrow and Escrow Holder is released of any liability in connection with same.

ARTICLE VIII REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as of the date of this Agreement, as follows:

8.1.1 Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and qualified to do business in Arizona.

8.1.2 Authority. Seller has full statutory power and authority to enter into this Agreement, and the Related Agreements and, subject to necessary regulatory authority, to carry out the obligations of Seller under this Agreement and the Related Agreements. The term "Related Agreements" means the COM Agreement, the Right of Entry License, and the Assignment.

8.1.3 Due Authorization. This Agreement and the Related Agreements have been duly authorized, executed and delivered by Seller. Neither the execution and delivery of this Agreement and the Related Agreements by Seller, the consummation by Seller of the transaction contemplated thereby, nor compliance or performance by Seller with any of the provisions thereof, does or will violate any judgment, order, law or regulation applicable to Seller or any provisions of Seller's certificate of incorporation or by-laws or result in any material breach of, or constitute a material default under, or result in the creation of, any material liens, charge, security interest or other encumbrance upon the Property (other than created by this transaction) pursuant to any note, bond, indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Seller is a party or by which any of the Property is bound.

8.1.4 Condemnation or Violations of Law. To the best of Seller's knowledge, except (a) as set forth in the Property Materials, (b) for any matter related to Buyer, or (c) as previously disclosed to Buyer in writing, Seller has not received any written notice of any existing or threatened condemnation or material violation of law.

8.1.5 Hazardous Materials. To the best of its knowledge, except as disclosed in the Property Materials, Seller has no knowledge of (a) any material release of a Hazardous Material, as defined in Section 3.1. heretofore, on or beneath the Property; (b) any receipt by Seller of any written governmental notice that any of the Property is in violation, in any material respect, under any law, or other governmental or judicial requirement, relating to Hazardous Materials; (c) any existing, pending or threatened investigation by any governmental authority

under or in connection with any law, or other governmental or judicial requirement, relating to Hazardous Materials; or (d) any other environmental assessment reports on the Property in the records of Seller's Real Estate Department in Omaha, Nebraska or Seller's Environmental Management Group in Omaha, Nebraska.

8.1.6 Litigation; Judgments. To the best of its knowledge, except as disclosed in the Property Materials, Seller has no knowledge of any pending litigation, administrative action, governmental investigation, examination, claim or demand (including, but not limited to, environmental investigations, examinations, claims and demands) whatsoever, nor any judgments, orders or decrees entered in any lawsuits or proceedings, affecting the Property.

8.1.7 Senior Rights. Seller has no knowledge that any tenant or other third party has any agreement or right granted by Seller to purchase all or any part of the Property that is senior to Buyer's rights hereunder.

8.1.8 Seller's Pre-Closing Deliveries. Seller represents that, to the best of its knowledge, it has delivered to Buyer true and correct copies of any and all valuation maps, Leases and Licenses, and environmental studies and reports in effect for, or applicable to, the Property as of the date of this Agreement to the extent the same are in the records of Seller's Real Estate Department offices in Omaha, Nebraska and Seller's Environmental Management Group offices in Omaha, Nebraska. In the event Seller discovers any additional Leases or Licenses, valuation maps or environmental studies or reports prior to the Closing, Seller shall promptly deliver the same to Buyer. Seller has no knowledge of (i) any tenancy or other agreements that materially affect Seller's current use of the Property, other than the Leases and Licenses; or (ii) any material defaults under any of the Leases and Licenses by any party thereunder. To Seller's knowledge, Seller has no unfulfilled financial obligations to tenants or other parties under any of the Leases or Licenses.

8.1.9 National Register of Historic Places. To Seller's knowledge, none of the Property improvements owned by Seller are listed on the National Register of Historic Places, or any comparable Arizona list.

8.1.10 Limitation. As used in this Agreement, the term "current, actual knowledge," or "to the best of its knowledge," or "Seller's knowledge" means and refers only to the current, actual (not constructive) knowledge, without any duty of investigation or inquiry, of Brian Morrissey, General Director Real Estate, Norman D. Siler, Manager-Environmental Site Remediation, Tony Love, General Manager Real Estate, Mark Schulte, Senior Real Estate Manager, Gregg Larsen, Manager Real Estate, Jerry Wilmoth, General Manager, Network Infrastructure, Jeff Asay, Assistant General Solicitor, and Gerry Sullivan, General Attorney (collectively, "Seller's Representatives").

8.1.11 Seller acknowledges and agrees that, other than the compensation paid to Seller hereunder, it is not entitled to any further assistance under the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. § 4601, *et seq.*), the State of Arizona's relocation laws (A.R.S. §11-961, *et. seq.*), or any other federal, state or local

law, ordinance or regulation requiring the provision of relocation assistance to persons displaced by action of public agencies by reason of the transactions contemplated by this Agreement.

8.1.12 Seller shall cooperate with Buyer's efforts to remove any encroachments after the Closing, which cooperation shall consist of making Seller's records reasonably available for Buyer's inspection and making Seller's employees reasonably available, at Buyer's sole cost and expense, to testify.

8.1.13 The foregoing representations and warranties of Seller shall survive the Closing and the delivery of the Deed for a period of five (5) years and shall then expire and terminate.

8.3 Representations, Warranties and Covenants of Buyer. Buyer hereby represents, warrants and covenants to Seller as of the date of this Agreement and as of the Closing Date, as follows:

8.3.1 Organization. Buyer is a municipal corporation, duly organized, validly existing and in good standing under the laws of the State of Arizona.

8.3.2 Due Authorization. This Agreement and the Related Agreements have been duly authorized, executed and delivered by Buyer. Neither the execution and delivery of this Agreement and the Related Agreements by Buyer, the consummation by Buyer of the transaction contemplated thereby, nor compliance or performance by Buyer with any of the provisions thereof does or will violate any judgment, order, law or regulation applicable to Buyer.

8.3.3 Authority. Buyer has full statutory power and authority to enter into this Agreement and the Related Agreements and, subject to necessary regulatory authority, to carry out the obligations of Buyer under this Agreement and the Related Agreements.

8.3.4 Threat of Eminent Domain. Buyer acknowledges and represents that it has the power of eminent domain. Buyer represents that it will institute eminent domain proceedings in the event that Seller does not sell the Property pursuant to this Agreement. Buyer further acknowledges that Seller intends to treat any gain or loss realized from the sale of the Property as sold under imminent threat of condemnation pursuant to Section 1033 of the federal Internal Revenue Code of 1986.

8.4 Mutual Representations and Covenants, Brokers and Finders. No broker's fee, finder's fee, commission or similar compensation shall be paid to principals of Buyer or Seller in connection with this Agreement. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection herewith other than as set forth above, Buyer, if such claim is based upon any agreement alleged to have been made by Buyer, hereby agrees to indemnify and hold Seller harmless against any and all liability, loss, cost, damage or expense (including reasonable attorneys' fees and costs) which Seller may sustain or incur by reason of such claim; and Seller, if such claim is based upon any agreement alleged to have been made by Seller, hereby agrees to indemnify and hold Buyer harmless against any and all

liability, loss, cost, damage or expense (including reasonable attorneys' fees and costs) which Buyer may sustain or incur by reason of such claim. The provisions of this Section shall survive the Close of Escrow or termination of this Agreement.

ARTICLE IX CONDEMNATION AND RISK OF LOSS

9.1 If, prior to the Close of Escrow, a governmental agency commences or imminently threatens in writing to commence any eminent domain proceedings to take any material portion of the Property, Buyer shall have the unilateral right, exercisable by giving notice of such decision to Seller within ten (10) days after receiving written notice of such actual or threatened condemnation proceedings, to terminate this Agreement, in which case Buyer and Seller shall each pay one-half (1/2) of the cost of cancellation of Escrow, and neither party shall have any further rights or obligations under this Agreement (other than the Surviving Obligations). If Buyer does not elect to terminate pursuant to this Section 9.1, the net proceeds of condemnation awards payable to Seller by reason of such condemnation shall be paid or assigned to Buyer upon the Close of Escrow.

9.2 If, prior to the Close of Escrow, the improvements on the Property are destroyed or materially damaged, Buyer shall have the unilateral right, exercisable by giving notice of such decision to Seller within ten (10) days after receiving written notice of such destruction or damage, to terminate this Agreement, in which case Buyer and Seller shall pay one-half (1/2) of the cost of cancellation of Escrow, and neither party shall have any further rights or obligations under this Agreement (other than the Surviving Obligations). If Buyer does not elect to terminate pursuant to this Section 9.2, the net insurance proceeds, if any, payable to Seller by reason of such destruction or damage shall be paid or assigned to Buyer upon the Close of Escrow.

ARTICLE X POSSESSION

Possession of the Property shall be delivered to Buyer on the Close of Escrow, subject to any Leases and Licenses identified in this Agreement.

ARTICLE XI MISCELLANEOUS

11.1 Agreement Expenses. The parties agree to bear their respective expenses, incurred or to be incurred in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated by this Agreement.

11.2 Satisfaction or Waiver of Contingencies. The consummation of the Closing shall be conclusive evidence that the contingencies and conditions to Closing have been fully satisfied or waived.

11.3 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns, except that Buyer's interest under this Agreement may not be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise, without Seller's prior written approval, which approval shall not be unreasonably withheld or delayed. Any assignment, encumbrance or other transfer in violation of the foregoing shall be void and Buyer shall be deemed in default hereunder; provided, however, that nothing in this Agreement shall be construed to prohibit Buyer's conveyance of all or any portion of the Property, or assignment of its rights as owner of the Property, following the Close of Escrow.

11.4 Parties in Interest. Except as expressly provided in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right to subrogation or action over against any party to this Agreement.

11.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior or contemporaneous oral or written agreements, representations, statements, documents, or understandings of the parties.

11.6 Amendment. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the party to be bound.

11.7 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

11.8 Timeliness. Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

11.9 Notices. Any notice or other communication required or permitted to be given under this Agreement ("Notices") shall be in writing and shall be (i) personally delivered; (ii) delivered by a reputable overnight courier; or (iii) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Telecopy notices shall be deemed valid only to the extent they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Notices shall be deemed received at the earlier of actual receipt or (i) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (ii) three (3) business days following deposit in the U.S. Mail, as evidenced by a return receipt.

Notices shall be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above:

If to Seller: Gregg A. Larsen
UNION PACIFIC RAILROAD COMPANY
1800 Farnam Street
Omaha, Nebraska 68179
Telephone: (402) 997-3552
Facsimile: (402) 997-3601

With copy to: UNION PACIFIC RAILROAD COMPANY
ATTN: Gerard Sullivan
1416 Dodge Street, Room 830
Omaha, Nebraska 68179
Telephone: (402) 271-4468
Facsimile: (402) 271-7107 or 271-5610

If to Buyer: Marlene A. Pontrelli
TEMPE CITY ATTORNEY
P.O. Box 5002
Tempe, AZ 85280
Telephone: (480) 350-8227
Facsimile: (480) 350-8645

With copy to: MILLER, OWEN & TROST
ATTN: Kirk Trost
428 "J" Street, Suite 400
Sacramento, California 95814-2394
Telephone: (916) 447-7933
Facsimile: (916) 447-5195

11.10 Governing Law and Venue. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Arizona, and any action or proceeding, including arbitration, brought by any party in which this Agreement is subject, shall be brought in the county in which the Property is located.

11.11 Effect of Headings. The headings of the paragraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

11.12 Intentionally Omitted.

11.13 Counterparts; Facsimile Signatures. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of

which together shall constitute one and the same instrument. Signatures delivered by one party to the other by facsimile shall be deemed original signatures and enforced accordingly.

11.14 Number and Gender. When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

11.15 Joint and Several Liability. In the event either party hereto now or hereafter shall consist of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations shall be jointly and severally liable as parties under this Agreement.

11.16 Recording. The parties shall record this Agreement or a memorandum thereof.

11.17 Further Assurances. Each party to this Agreement agrees to execute, acknowledge, and deliver such further instruments as may be necessary or desirable to accomplish the intent and purpose of this Agreement, provided that the party requesting such further action shall bear all costs and expenses related thereto.

11.18 Advice of Professionals. Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice as each party deems appropriate.

11.19 Negotiated Terms. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement.

11.20 Recitals and Exhibits. The recitals and contents of all Exhibits to this Agreement are incorporated by reference and constitute a material part of this Agreement.

11.21 Professional Fees and Costs. If any legal or equitable action, arbitration, or other proceeding, whether on the merits, application, or motion, are brought or undertaken to enforce this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, then the successful or prevailing party or parties in such undertaking shall be entitled to recover reasonable attorney's and other professional fees, expert witness fees, court costs and other expenses incurred in such action, proceeding, or discussions, in addition to any other relief to which such party may be entitled. The parties intend this provision to be given the most liberal construction possible and to apply to any circumstances in which such party reasonably incurs expenses. The provisions of this Section shall survive the Close of Escrow or the termination of this Agreement.

11.22 Confidentiality. All information, studies and reports relating to the environmental condition of the Property obtained by Buyer, either by the observations and examinations of its agents and representatives or as disclosed to it by Seller, shall remain confidential and Buyer shall not disclose any such matters to any person or governmental agency except as required by law. If the transaction contemplated herein fails to close for any reason, Buyer shall deliver and return to Seller, at no cost to Seller, all such information, reports and studies, and Buyer shall

make no further distributions or disclosures of any such information, reports and studies. The provisions of this Section shall survive the termination of this Agreement.

11.23 Severability. Any provision of this Agreement that is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

11.24 Merger. Except as otherwise expressly provided herein, the covenants, representations and warranties of Buyer and Seller herein shall merge into the Deed to be delivered by Seller to Buyer at Closing and shall not survive the Closing of Escrow.

11.25 Survival. Buyer and Seller acknowledge and agree that in the event of the termination howsoever of this Agreement, the obligations of and indemnity by Buyer in Section 3.2, the confidentiality provisions of Section 11.22, and the provisions of Sections 3.1, 8.4 and 11.21 hereof (hereafter "Surviving Obligations") shall not be limited, impaired or otherwise affected by any termination of this Agreement as a result of such termination.

11.26 Cancellation. This Agreement is subject to cancellation by Buyer pursuant to the provisions of A.R.S. §38.511.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

SELLER:

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By: _____
Tony K. Love,
General Manager – Real Estate

**BUYER: CITY OF TEMPE, a municipal corporation created under the provisions of
Arizona law**

By: _____
Name: _____
Title: _____

APPROVED AS TO LEGAL FORM

Name: _____
Title: _____

ATTEST:

Name: _____
Title: _____

THE UNDERSIGNED ESCROW HOLDER ACKNOWLEDGES ITS RECEIPT OF THREE (3) EXECUTED COPIES OF THIS AGREEMENT AND AGREES TO ACT IN ACCORDANCE THEREWITH.

ESCROW HOLDER:

CHICAGO TITLE INSURANCE COMPANY

By: _____
DeWayne C. Huffman, Escrow Officer

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS
BRIDGE PROPERTY
List of Exhibits

Exhibit A Print of Property

Exhibit B Quit Claim Deed – Bridge Property
 Exhibit “A” Legal Description
 Exhibit “B” Certification of Non-Foreign Status

Exhibit C Property Materials

Exhibit D Assignment and Assumption Agreement
 Exhibit “A” Legal Description of Property
 Exhibit “B” List of Leases and Licenses to be Assigned

Exhibit E Certification of Non-Foreign Status

**Exhibit F Construction, Operations and Maintenance Agreement between Valley
Metro Rail, Inc. and Union Pacific Railroad Company**
 Exhibit “A” Depiction of Lrt Property
 Exhibit “B” Depiction of Lrt Property
 Exhibit “C” Depiction of Parallel Corridor Segment
 Exhibit “D” Description of Parallel Corridor Segment
 Exhibit “E” Joint Right of Entry License
 Exhibit “F” Contractor’s Right of Entry Agreement
 Exhibit “G” Standard Terms and Conditions

EXHIBIT A

PRINT OF PROPERTY

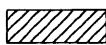
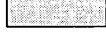
Exhibit for Tempe Town Lake LRT Alignment

A PORTION OF LAND LOCATED
IN SE ¼ SEC 9, W ½ SEC 15 & NE ¼ SEC 16
T1N, R4E, G&SRBM

#	LINE TABLE				
	DISTANCE		BEARING		
	LINE	REC	MES	REC	MES
L1			253.67'		N00°03'58"W
L2			99.29'		N02°17'27"W
L3			131.98'		N02°34'15"W
L4			145.59'		N04°23'27"W
L5			846.24'		N05°04'59"W
L6			123.21'		N14°39'02"W
L7			61.41'		N51°35'12"W
L8			8.79'		S66°05'58"E
L9			305.36'		S05°04'59"E
L10			759.01'		S00°00'04"E
L11			7.10'		N87°55'08"E
L12			27.76'		S46°56'28"E
L13			286.72'		S00°44'41"E
L14			477.94'		S00°00'04"E
L15			275.35'		S00°03'13"E

#	CURVE TABLE							
	DELTA		LENGTH		RADIUS		RADIUS BEARING	
	CURVE	REC	MES	REC	MES	REC	MES	
C1			8°16'44"		193.10'		1336.41'	N79°55'21"E
C2			1°10'43"		120.91'		5877.16'	N89°02'37"E
C3			0°36'04"		110.15'		10496.62'	N89°58'09"W
C4			1°34'14"		118.95'		4338.96'	S89°22'27"W
C5			0°00'25"		10.81'		90344.32'	S87°29'00"W
C6			0°09'34"		59.80'		21496.58'	S87°26'14"W
C7			1°10'28"		133.22'		6499.66'	S87°12'21"W
C8			7°13'13"		249.22'		1977.66'	S86°00'03"W
C9			1°31'55"		51.10'		1911.42'	S78°22'08"W
C10			38°56'54"		641.88'		944.25'	S74°38'36"W
C11			10°54'55"		74.85'		392.91'	S23°54'02"W
C12			42°43'47"		689.54'	924.59'	924.59'	S34°48'58"W
C13			20°16'31"		440.89'	1245.92'	1245.92'	S65°53'03"W
C14			3°43'31"		41.82'		643.12'	N89°15'19"E

LEGEND

- (C) CALCULATED
- (R) RECORDED
- (M) MEASURED
-  R.O.W. TO BE ACQUIRED
AREA = 107,246 SQ.FT. ±
-  EXISTING UNION PACIFIC ESMT

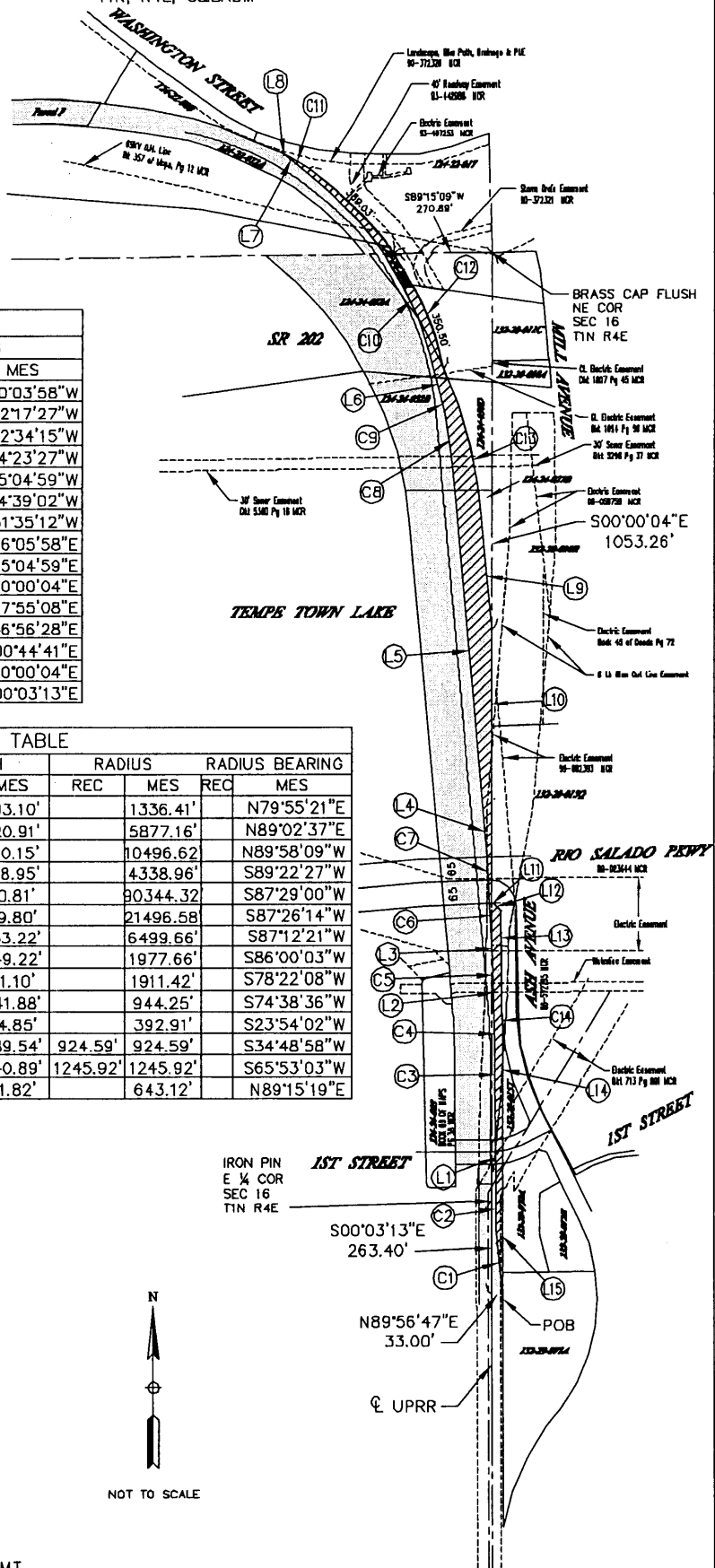
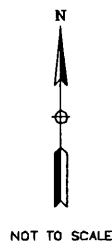


EXHIBIT B

**QUIT CLAIM DEED
(Bridge Property)**

Send Tax Statements to:

(Space above line for Recorder's use only)

APN _____ This instrument is exempt from Affidavit and Filing Fees (ARS §42-1614A2)

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Grantor") (formerly known as Southern Pacific Transportation Company, a Delaware corporation), in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUIT CLAIM to the CITY OF TEMPE, a municipal corporation created under the provisions of Arizona law ("Grantee"), whose address is P.O. Box 5002, Tempe, Arizona 85280 and unto its successors and assigns forever, all of Grantor's right, title, interest, estate, claim and demand, both at law and in equity (including without limitation all right, title, interest, estate, claim and demand, which Grantor has by virtue of the General Railroad Right-of-Way Act of March 3, 1875, ch.152, 18 U.S. Stat. 482, 43 U.S.C., sections 934-939), of, in, and to the real estate (hereinafter the "Property") situated in the in the City of Tempe, County of Maricopa, State of Arizona, as more particularly described in **Exhibit A**, hereto attached and hereby made a part hereof.

The Property is being conveyed subject to the following reservations, covenants and restrictions:

(1) The terms and conditions of the General Railroad Right-of-Way Act of March 3, 1875, ch.152, 18 U.S. Stat. 482, 43 U.S.C., Sections 934-939.

(2) EXCEPTING exclusive PERPETUAL EASEMENT five feet (5') in width measured from the centerline of any existing fiber optic improvements (i.e., two and one-half feet (2.5') on either side of the centerline), in, on, over, under and across the Property ("Fiber Optics Easement Property"), in which areas Grantor, Williams Communications LLC ("Williams Communications"), its successors or assigns, shall have the right to own, reconstruct, maintain, operate, use and/or remove existing and/or future communication systems, lines and facilities, including, but not limited to, all existing fiber optic lines and related equipment (the "Fiber Optics Improvements"). Grantor does further reserve unto itself, its successors and assigns, a

limited right-of-way and right of access to the Fiber Optics Easement Property over and across the Property, for the purposes of the use, enjoyment, maintenance, operation and access to the Fiber Optics Easement Property. All future Fiber Optics Improvements placed on the Fiber Optics Easement Property shall conform to any and all limitations on such improvements presently set forth in that certain Fiber Optic Agreement between Williams Communications, Inc. and Grantor dated March 27, 1998 (the "Williams Fiber Optics Agreement"). All Fiber Optics Improvements presently existing on or hereafter constructed on the Fiber Optics Easement Property shall remain the personal property of Grantor or the party owning/controlling/installing same.

FURTHER EXCEPTING exclusive PERPETUAL EASEMENTS ten feet (10') in width measured from the centerline of any existing fiber optic improvements (i.e., five feet (5') on either side of the centerline), in, on, over, under and across the Property ("Fiber Optics Easement Property"), in which areas Grantor, Quest Communications and MCI Telecommunications Corporation and their respective successors or assigns, shall have the right to own, reconstruct, maintain, operate, use and/or remove existing and/or future communication systems, lines and facilities, including, but not limited to, all existing fiber optic lines and related equipment (the "Fiber Optics Improvements"). Grantor does further reserve unto itself, its successors and assigns, a limited right-of-way and right of access to the Fiber Optics Easement Property over and across the Property, for the purposes of the use, enjoyment, maintenance, operation and access to the Fiber Optics Easement Property. All future Fiber Optics Improvements placed on the Fiber Optics Easement Property shall conform to any and all limitations on such improvements presently set forth in that certain Fiber Optic Agreement between Grantor and Qwest Communications dated August 9, 1996 (the "Qwest Fiber Optics Agreement") and that certain Fiber Optic Agreement between MCI Telecommunications Corporation and Grantor dated September 25, 1989 (the "MCI Fiber Optics Agreement"). Grantor represents to Grantee that the Qwest Fiber Optics Agreement and the MCI Fiber Optics Agreement both require this reserved easement to be at least ten feet (10') in width. All Fiber Optics Improvements presently existing on or hereafter constructed on the Fiber Optics Easement Property shall remain the personal property of Grantor or the party owning/controlling/installing same.

(a) Grantor shall be entitled to all revenues derived from its agreements with Williams Communications, MCI, Quest and their successors and assigns, affecting the Fiber Optics Easement Property.

(b) No permanent building, structure or fence and no material or obstruction of any kind or character shall be stored or maintained on said Fiber Optics Easement Property which would obstruct or interfere with the easement without the prior written consent of the easement owner. Notwithstanding the foregoing, Grantee shall have the right to place or make the following improvements on or to the Fiber Optics Easement Property, without first obtaining Grantor's approval: fences, movable walls, and other movable barriers; security lighting; asphalt, concrete, or other pavement; and landscaping.

(c) Notwithstanding any other provision contained herein, the quit claim of the Property is subject to, and the Fiber Optics Easement reserved herein shall allow

Grantor to honor its grant and fulfill its other obligations as grantor under the fiber agreements referenced heretofore.

(d) If Grantee requests in writing that some or all of the Fiber Optics Improvements be relocated to Grantor's adjacent railroad right-of-way, Grantor shall, to the extent feasible, taking into consideration Grantor's operational needs and concerns on Grantor's adjacent railroad right-of-way, reasonably cooperate with Grantee to cause Williams Communications, its successors or assigns, Qwest Communications, its successors or assigns, and/or MCI Telecommunications Corporation, its successors and assigns, to so relocate the Fiber Optics Improvements so that the entire width of the fiber optics easement is located on the Grantor's adjacent railroad right-of-way. Any and all costs and expenses connected with any such relocation made at Grantee's written request shall be borne by Grantee.

(e) If the Fiber Optics Improvements owned by Williams Communications, its successors or assigns, Qwest Communications, its successors or assigns, or MCI Telecommunications Corporation, its successors and assigns, are relocated off of the Property, the easement reserved by Grantor in connection therewith shall terminate and Grantor will, at the request of Grantee, execute and deliver a quit claim deed evidencing termination of such reserved easement.

(f) Grantee, and each subsequent Grantee of the Property, shall, promptly following any sale or lease of the Property, deliver, or cause to be delivered, to MCI Telecommunications Corporation, 400 International Parkway, Attn: Senior Mgr.-Dept.1238, Richardson, Texas 75081, and to MCI Telecommunications Corporation, 1133 19th Street NW, Attn: Assistant General Counsel - Dept. 0598, Washington, D.C. 20036, the name and address of the grantee or lessee.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging; TO HAVE AND TO HOLD, subject to the aforesaid provisions, the Property unto the said Grantee and unto its successors and assigns.

Grantor, Federal ID No. 94-6001323, is not a foreign corporation and withholding of Federal Income Tax from the amount realized will not be made by Grantee. A Certification prepared in conformance with IRS regulations under Section 1445 of the Internal Revenue Code is attached as **Exhibit B**.

IN WITNESS WHEREOF, the Grantor has caused this deed to be duly executed as of the ____ day of _____, 2003.

Attest:

UNION PACIFIC RAILROAD COMPANY,

Assistant Secretary

By _____
Title:

The undersigned Grantee accepts this Deed subject to the terms, reservations, conditions and covenants set forth heretofore.

GRANTEE
CITY OF TEMPE

By: _____

Its: _____

Date: _____

EXHIBIT "A" TO EXHIBIT B

**UNION PACIFIC RAILROAD COMPANY
Tempe, Maricopa County, Arizona**

(Bridge Property)

A portion of land located the Southeast Quarter (SE ¼) of Section 9, West Half (W ½) of Section 15 and the Northeast Quarter (NE ¼) of Section 16, Township 1 North, Range 4 East of the Gila and Salt River Base Meridian, Maricopa County, Arizona. More particularly described as follows:

Commencing at the East Quarter Corner of said Section 16;

Thence, South 00°03'13" East, along the East line of said Section 16, a distance of 263.40 feet;

Thence, North 89°56'47" East, a distance of 33.00 feet to a point and the Point of Beginning, being 33.00 feet North 89°56'47" East from the center of the Union Pacific Railroad tracks, the beginning of a on a non-tangent curve whose 1336.41 foot radius bears North 79°55'21" East and is concave Northeasterly;

Thence, Northerly, along said curve, through a central angle of 8°16'44", a distance of 193.10 feet to the beginning of a compound curve whose 5877.16 foot radius bears North 89°02'37" East, concave Northeasterly and is 13.22 feet North 89°56'47" East from the center of the Union Pacific Railroad tracks;

Thence, Northerly, along said curve, through a central angle of 1°10'43", a distance of 120.91 feet, said point is 12.56 feet North 89°56'47" East from the center of the Union Pacific Railroad tracks;

Thence, North 00°03'58" West, a distance of 253.67 feet to a point being 12.50 feet North 89°56'47" East from the center of the Union Pacific Railroad tracks, the beginning of a non-tangent curve whose 10496.62 foot radius bears North 89°58'09" West and is concave Northwesterly;

Thence, Northwesterly, along said curve, through a central angle of 0°36'04", a distance of 110.15 feet to a point being 12.86 feet North 88°44'21" East from the center of the Union Pacific Railroad tracks, the beginning of a non-tangent curve whose 4338.96 foot radius bears South 89°22'27" West and is concave Southwesterly;

Thence, Northwesterly, along said curve, through a central angle of 1°34'14", a distance of 118.95 feet to a point being 15.60 feet North 85°59'15" East from the center of the Union Pacific Railroad tracks;

Thence, North 02°17'27" West, a distance of 99.29 feet to the beginning of a non-tangent curve whose 90344.32 foot radius bears South 87°29'00" West, is concave Northwest and is 19.40 feet North 85°03'12" East from the center of the Union Pacific Railroad tracks;

Thence, Northwesterly, along said curve, through a central angle of 0°00'25", a distance of 10.81 feet to a point being 19.85 feet North 85°02'20" East from the center of the Union Pacific Railroad tracks;

Thence, North $02^{\circ}34'15''$ West, a distance of 131.98 feet to a point being 25.57 feet North $84^{\circ}54'27''$ East from the center of the Union Pacific Railroad tracks and is the beginning of a non-tangent curve whose 21496.58 foot radius bears South $87^{\circ}26'14''$ West and is concave Southwesterly;

Thence, Northwesterly, along said curve, through a central angle of $0^{\circ}09'34''$, a distance of 59.80 feet to a point being 28.13 feet North $84^{\circ}54'27''$ East from the center of the Union Pacific Railroad tracks and is the beginning of a compound curve whose 6499.66 foot radius bears South $87^{\circ}12'21''$ West, is concave Southwesterly;

Thence, Northwesterly, along said curve, through a central angle of $1^{\circ}10'28''$, a distance of 133.22 feet to a point being 32.09 feet North $84^{\circ}58'06''$ East from the center of the Union Pacific Railroad tracks;

Thence, North $04^{\circ}23'27''$ West, a distance of 145.59 feet, said point being 33.66 feet North $84^{\circ}53'59''$ East from the center of the Union Pacific Railroad tracks;

Thence, North $05^{\circ}04'59''$ West, a distance of 846.24 feet to the beginning of a non-tangent curve whose 1977.66 foot radius bears South $86^{\circ}00'03''$ West, is concave Southwesterly and is 33.80 feet North $84^{\circ}54'47''$ East from the center of the Union Pacific Railroad tracks;

Thence, Northwesterly, along said curve, through a central angle of $7^{\circ}13'13''$, a distance of 249.22 feet to the beginning of a compound curve whose 1911.42 foot radius bears South $78^{\circ}22'08''$ West, is concave Northwesterly and is 23.13 feet North $84^{\circ}39'09''$ East from the center of the Union Pacific Railroad tracks;

Thence, Northwesterly, along said curve, through a central angle of $1^{\circ}31'55''$, a distance of 51.10 feet, said point is 18.29 feet North $82^{\circ}45'27''$ East from the center of the Union Pacific Railroad tracks;

Thence, North $14^{\circ}39'02''$ West, a distance of 123.21 feet to a point being 12.71 feet North $74^{\circ}22'04''$ East from the center of the Union Pacific Railroad tracks and is the beginning of a non-tangent curve whose 944.25 foot radius bears South $74^{\circ}38'36''$ West and is concave Southwesterly;

Thence, Northwesterly, along said curve, through a central angle of $38^{\circ}56'54''$, a distance of 641.88 feet and is 29.82 feet North $33^{\circ}20'41''$ East from the center of the Union Pacific Railroad tracks;

Thence, North $51^{\circ}35'12''$ West, a distance of 61.41 feet, said point being 37.41 feet North $29^{\circ}45'01''$ East from the center of the Union Pacific Railroad tracks;

Thence, South $66^{\circ}05'58''$ East, a distance of 8.79 feet to the beginning of a tangent curve, having a 392.91 foot radius and is concave Southwesterly;

Thence, Southeasterly, along said curve, through a central angle of $10^{\circ}54'55''$, a distance of 74.85 feet to the beginning of a non-tangent curve whose 924.59 foot radius bears South $34^{\circ}48'58''$ West and is concave Southwesterly;

Thence, Southeasterly, along said curve, through a central angle of $42^{\circ}43'47''$, a distance of 689.54 feet to the beginning of a non-tangent curve, whose 1245.92 foot radius bears South $65^{\circ}53'03''$ West and is concave Southwesterly;

Thence, Southeasterly, along said curve, through a central angle of $20^{\circ}16'31''$, a distance of 440.89 feet;

Thence, South $05^{\circ}04'59''$ East, a distance of 305.36 feet to a point being South $00^{\circ}00'04''$ East, a distance of 1053.26 feet from the Northeast corner of said Section 16;

Thence, South $00^{\circ}00'04''$ East, a distance of 759.01 feet;

Thence, North $87^{\circ}55'08''$ East, a distance of 7.10 feet;

Thence, South $46^{\circ}56'28''$ East, a distance of 27.76 feet;

Thence, South $00^{\circ}44'41''$ East, a distance of 286.72 feet to the beginning of a tangent curve, having a 643.12 foot radius and is concave Southwesterly;

Thence, Southeasterly, along said curve, through a central angle of $3^{\circ}43'31''$, a distance of 41.82 feet;

Thence, South $00^{\circ}00'04''$ East, a distance of 477.94 feet;

Thence, South $00^{\circ}03'13''$ East, a distance of 275.35 feet to the Point of Beginning.

This tract contains 107,246.0 Square Feet or 2.468 Acres, more or less.

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA
JCO
October 29, 2003
211407.leg

EXHIBIT "B" TO EXHIBIT B

CERTIFICATION OF NON-FOREIGN STATUS

Under Section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform the transferee, CITY OF TEMPE, that no withholding is required with respect to the transfer of a U.S. real property interest by UNION PACIFIC RAILROAD COMPANY, the undersigned hereby certifies the following on behalf of UNION PACIFIC RAILROAD COMPANY:

1. UNION PACIFIC RAILROAD COMPANY is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. UNION PACIFIC RAILROAD COMPANY'S U.S. employer identification number is 94-6001323; and
3. UNION PACIFIC RAILROAD COMPANY'S office address is 1416 Dodge Street, Omaha, Nebraska 68179, and place of incorporation is Delaware.

UNION PACIFIC RAILROAD COMPANY agrees to inform the transferee if it becomes a foreign person at any time during the three year period immediately following the date of this notice.

UNION PACIFIC RAILROAD COMPANY understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of UNION PACIFIC RAILROAD COMPANY.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Title: _____
Date: _____

EXHIBIT C

PROPERTY MATERIALS

1. Letter dated October 21, 2002 from Gregg A. Larsen, Manager Real Estate, Union Pacific Railroad Company, to Kirk E. Trost, Hyde, Miller, Owen & Trost, entitled "Proposed sale of land to the City of Tempe across the Salt River and near University Avenue and Farmers Street, Folders 2114-06 & 2114-07," and all valuation maps, property schedules, vesting deeds, easements, licenses and leases enclosed therewith. (Note: only Folder 2114-07 is applicable to this transaction.)

2. Letter dated July 16, 2003 from Gregg A. Larsen, Manager Real Estate, Union Pacific Railroad Company, to Kirk E. Trost, Hyde, Miller, Owen & Trost, entitled "Proposed sale of land to the City of Tempe across the Salt River" and accompanying copy of Grant of New Easement and Release and Quit Claim of Existing Easement dated August 19, 1999 with Salt River Project Agricultural Improvement and Power District.

EXHIBIT D

ASSIGNMENT AND ASSUMPTION AGREEMENT

FOR VALUE RECEIVED, UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Assignor"), acting by and through its duly authorized officers, has ASSIGNED AND TRANSFERRED, and by these presents does ASSIGN AND TRANSFER unto the CITY OF TEMPE, a municipal corporation created under the provisions of Arizona law ("Assignee"), all of Assignor's right, title and interest in and to the tenant leases and licenses ("Leases and Licenses") now or hereafter affecting the real property (the "Property") described on **Exhibit A**, which Leases and Licenses, and all amendments thereto, are described on **Exhibit B**, together with all security deposits and other deposits held by Assignor under the terms of said Leases and Licenses.

TO HAVE AND TO HOLD the Leases and Licenses unto Assignee, its successors and assigns. This Assignment is made and accepted without recourse against Assignor as to the performance by any party under such Leases and Licenses.

Assignee agrees to perform all of the obligations of Assignor pursuant to the Leases and Licenses accruing after the date hereof.

This Assignment and Assumption Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This Assignment and Assumption Agreement shall be construed in accordance with, and governed by, the laws of the State of Arizona, and any action or proceeding, including arbitration, brought by any party in which this Agreement is subject, shall be brought in the county in which the Property is located.

All exhibits attached to this Agreement are incorporated herein for all purposes.

This Assignment and Assumption Agreement shall inure to and be binding upon the parties, their successors and assigns.

Dated the _____ day of _____, 200_.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____

Title: _____

_____,

a _____

By: _____

Title: _____

EXHIBIT "A" TO EXHIBIT D

Legal Description of Property

A portion of land located the Southeast Quarter (SE ¼) of Section 9, West Half (W ½) of Section 15 and the Northeast Quarter (NE ¼) of Section 16, Township 1 North, Range 4 East of the Gila and Salt River Base Meridian, Maricopa County, Arizona. More particularly described as follows:

Commencing at the East Quarter Corner of said Section 16;

Thence, South 00°03'13" East, along the East line of said Section 16, a distance of 263.40 feet;

Thence, North 89°56'47" East, a distance of 33.00 feet to a point and the Point of Beginning, being 33.00 feet North 89°56'47" East from the center of the Union Pacific Railroad tracks, the beginning of a on a non-tangent curve whose 1336.41 foot radius bears North 79°55'21" East and is concave Northeasterly;

Thence, Northerly, along said curve, through a central angle of 8°16'44", a distance of 193.10 feet to the beginning of a compound curve whose 5877.16 foot radius bears North 89°02'37" East, concave Northeasterly and is 13.22 feet North 89°56'47" East from the center of the Union Pacific Railroad tracks;

Thence, Northerly, along said curve, through a central angle of 1°10'43", a distance of 120.91 feet, said point is 12.56 feet North 89°56'47" East from the center of the Union Pacific Railroad tracks;

Thence, North 00°03'58" West, a distance of 253.67 feet to a point being 12.50 feet North 89°56'47" East from the center of the Union Pacific Railroad tracks, the beginning of a non-tangent curve whose 10496.62 foot radius bears North 89°58'09" West and is concave Northwesterly;

Thence, Northwesterly, along said curve, through a central angle of 0°36'04", a distance of 110.15 feet to a point being 12.86 feet North 88°44'21" East from the center of the Union Pacific Railroad tracks, the beginning of a non-tangent curve whose 4338.96 foot radius bears South 89°22'27" West and is concave Southwesterly;

Thence, Northwesterly, along said curve, through a central angle of 1°34'14", a distance of 118.95 feet to a point being 15.60 feet North 85°59'15" East from the center of the Union Pacific Railroad tracks;

Thence, North 02°17'27" West, a distance of 99.29 feet to the beginning of a non-tangent curve whose 90344.32 foot radius bears South 87°29'00" West, is concave Northwest and is 19.40 feet North 85°03'12" East from the center of the Union Pacific Railroad tracks;

Thence, Northwesterly, along said curve, through a central angle of 0°00'25", a distance of 10.81 feet to a point being 19.85 feet North 85°02'20" East from the center of the Union Pacific Railroad tracks;

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curve whose 21496.58 foot radius bears South $87^{\circ}26'14''$ West and is concave Southwesterly;

Thence, Northwesternly, along said curve, through a central angle of $0^{\circ}09'34''$, a distance of 59.80 feet to a point being 28.13 feet North $84^{\circ}54'27''$ East from the center of the Union Pacific Railroad tracks and is the beginning of a compound curve whose 6499.66 foot radius bears South $87^{\circ}12'21''$ West, is concave Southwesterly;

Thence, Northwesternly, along said curve, through a central angle of $1^{\circ}10'28''$, a distance of 133.22 feet to a point being 32.09 feet North $84^{\circ}58'06''$ East from the center of the Union Pacific Railroad tracks;

Thence, North $04^{\circ}23'27''$ West, a distance of 145.59 feet, said point being 33.66 feet North $84^{\circ}53'59''$ East from the center of the Union Pacific Railroad tracks;

Thence, North $05^{\circ}04'59''$ West, a distance of 846.24 feet to the beginning of a non-tangent curve whose 1977.66 foot radius bears South $86^{\circ}00'03''$ West, is concave Southwesterly and is 33.80 feet North $84^{\circ}54'47''$ East from the center of the Union Pacific Railroad tracks;

Thence, Northwesternly, along said curve, through a central angle of $7^{\circ}13'13''$, a distance of 249.22 feet to the beginning of a compound curve whose 1911.42 foot radius bears South $78^{\circ}22'08''$ West, is concave Northwesternly and is 23.13 feet North $84^{\circ}39'09''$ East from the center of the Union Pacific Railroad tracks;

Thence, Northwesternly, along said curve, through a central angle of $1^{\circ}31'55''$, a distance of 51.10 feet, said point is 18.29 feet North $82^{\circ}45'27''$ East from the center of the Union Pacific Railroad tracks;

Thence, North $14^{\circ}39'02''$ West, a distance of 123.21 feet to a point being 12.71 feet North $74^{\circ}22'04''$ East from the center of the Union Pacific Railroad tracks and is the beginning of a non-tangent curve whose 944.25 foot radius bears South $74^{\circ}38'36''$ West and is concave Southwesterly;

Thence, Northwesternly, along said curve, through a central angle of $38^{\circ}56'54''$, a distance of 641.88 feet and is 29.82 feet North $33^{\circ}20'41''$ East from the center of the Union Pacific Railroad tracks;

Thence, North $51^{\circ}35'12''$ West, a distance of 61.41 feet, said point being 37.41 feet North $29^{\circ}45'01''$ East from the center of the Union Pacific Railroad tracks;

Thence, South $66^{\circ}05'58''$ East, a distance of 8.79 feet to the beginning of a tangent curve, having a 392.91 foot radius and is concave Southwesterly;

Thence, Southeasterly, along said curve, through a central angle of $10^{\circ}54'55''$, a distance of 74.85 feet to the beginning of a non-tangent curve whose 924.59 foot radius bears South $34^{\circ}48'58''$ West and is concave Southwesterly;

Thence, Southeasterly, along said curve, through a central angle of $42^{\circ}43'47''$, a distance of 689.54 feet to the beginning of a non-tangent curve, whose 1245.92 foot radius bears South $65^{\circ}53'03''$ West and is concave Southwesterly;

Thence, Southeasterly, along said curve, through a central angle of $20^{\circ}16'31''$, a distance of 440.89 feet;

Thence, South $05^{\circ}04'59''$ East, a distance of 305.36 feet to a point being South $00^{\circ}00'04''$ East, a distance of 1053.26 feet from the Northeast corner of said Section 16;

Thence, South $00^{\circ}00'04''$ East, a distance of 759.01 feet;

Thence, North $87^{\circ}55'08''$ East, a distance of 7.10 feet;

Thence, South $46^{\circ}56'28''$ East, a distance of 27.76 feet;

Thence, South $00^{\circ}44'41''$ East, a distance of 286.72 feet to the beginning of a tangent curve, having a 643.12 foot radius and is concave Southwesterly;

Thence, Southeasterly, along said curve, through a central angle of $3^{\circ}43'31''$, a distance of 41.82 feet;

Thence, South $00^{\circ}00'04''$ East, a distance of 477.94 feet;

Thence, South $00^{\circ}03'13''$ East, a distance of 275.35 feet to the Point of Beginning.

This tract contains 107,246.0 Square Feet or 2.468 Acres, more or less.

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA
JCO
October 29, 2003
211407.leg

EXHIBIT “B” TO EXHIBIT D

LIST OF LEASES AND LICENSES TO BE ASSIGNED

EXHIBIT "B"

U.P.R.R. REAL ESTATE DEPARTMENT

SALE OF LAND

CITY OF TEMPE, AZ

MP 913.75 TO MP 914.31

FOLDER NO. 0211407

AUDIT	PARTY NAME	PURPOSE	CITY	ST	MP START	ANNUAL AMT	DISPOSITION	CONTAINED
211705	SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT & POWER DISTRICT	Easement - Pipe, Wire, Roadway, Drainage	TEMPE	AZ	914.3	\$0	Assigned	Partially
205089	ARIZONA PUBLIC SERVICE COMPANY	Crossing - Wireline	TEMPE	AZ	914.31	\$0	Assigned	Partially
204423	QWEST CORPORATION	Crossing - Wireline	TEMPE	AZ	914.34	\$0	Assigned	Partially
S161020	ARIZONA PUBLIC SERVICE CO	Wire	TEMPE	AZ	914.28	\$0	Assigned	Partially
S138421	ARIZONA PUBLIC SERVICE CO	Wire	TEMPE	AZ	913.86	\$0	Assigned	Partially
S212353	ARIZONA STATE DEPT. OF TRANSPORTATION	Pipeline	TEMPE	AZ	913.8	\$0	Assigned	Partially
SPA9677	ARIZONA PUBLIC SERVICE CORP.	Wire	TEMPE	AZ	913.87	\$	Assigned	Partially
201432	ARIZONA PUBLIC SERVICE	Crossing - Wireline	TEMPE	AZ	913.9	\$0	Assigned	Partially
207194	ARIZONA PUBLIC SERVICE COMPANY	Crossing - Wireline	TEMPE	AZ	913.93	\$0	Assigned	Partially
200483	TEMPE, CITY OF	Crossing Pipeline	TEMPE	AZ	914.14	\$0	Assigned	Partially
SPZ8521	WESTERN UNION TELEGRAPH COMPANY	None	TEMPE	AZ		\$	Assigned	Partially
205088	ARIZONA PUBLIC SERVICE COMPANY	Crossing - Wireline	TEMPE	AZ	913.95	\$0	Assigned	Partially
201023	CITY OF TEMPE	Crossing Pipeline	TEMPE	AZ	913.63	\$0	Assigned	Partially
SPA8998	CITY OF TEMPE	Lease	TEMPE	AZ	914.17	\$584	Assigned	Partially
S207557	TEMPE CITY OF	Lease of Land for Retail Business	TEMPE	AZ	914.4	\$0	Assigned	Partially

EXHIBIT E

CERTIFICATION OF NON-FOREIGN STATUS

Under Section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform the transferee, CITY OF TEMPE, that no withholding is required with respect to the transfer of a U.S. real property interest by UNION PACIFIC RAILROAD COMPANY, the undersigned hereby certifies the following on behalf of UNION PACIFIC RAILROAD COMPANY:

1. UNION PACIFIC RAILROAD COMPANY is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. UNION PACIFIC RAILROAD COMPANY'S U.S. employer identification number is 94-6001323; and
3. UNION PACIFIC RAILROAD COMPANY'S office address is 1416 Dodge Street, Omaha, Nebraska 68179, and place of incorporation is Delaware.

UNION PACIFIC RAILROAD COMPANY agrees to inform the transferee if it becomes a foreign person at any time during the three year period immediately following the date of this notice.

UNION PACIFIC RAILROAD COMPANY understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of UNION PACIFIC RAILROAD COMPANY.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Title: _____
Date: _____

EXHIBIT F

**CONSTRUCTION,
OPERATIONS AND MAINTENANCE AGREEMENT
BETWEEN
VALLEY METRO RAIL, INC.
AND
UNION PACIFIC RAILROAD COMPANY**

This Construction, Operations and Maintenance Agreement (the "Agreement") is entered into as of the [____] day of [_____,] 2003, by and between **VALLEY METRO RAIL, INC.**, a nonprofit corporation formed pursuant to A.R.S. Section 11-952 ("Valley Metro Rail"), and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("UP").

Recitals

A. **WHEREAS**, UP owns and operates a railroad right-of-way in Tempe, Arizona, commonly known as the Phoenix Subdivision; and

B. **WHEREAS**, the City of Tempe ("Tempe") has acquired certain real property adjacent to UP's Phoenix Subdivision right-of-way (the "LRT Property"), including real property purchased from UP, as shown in Exhibit A, and described on Exhibit B, attached hereto and incorporated herein; and

C. **WHEREAS**, Tempe, along with the Cities of Phoenix, Mesa, and Glendale, have formed Valley Metro Rail, as an independent public entity, to construct and operate a light rail transit system connecting the Cities of Glendale, Phoenix, Tempe, and Mesa; and

D. **WHEREAS**, Tempe will transfer to Valley Metro Rail the right to use the LRT Property to construct and operate a portion of said light rail transit system parallel to UP's continued freight operations on the Phoenix Subdivision; and

E. **WHEREAS**, the parties desire to set forth their respective rights and obligations with respect to the construction of the Project and their respective operations and maintenance in and adjacent to the Parallel Corridor Segment (as defined below and described on Exhibit D), except that the parties' rights and obligations with respect to hazardous materials contamination of the real property purchased from UP, if any, shall be governed by the terms and conditions of the Purchase and Sale Agreement between UP and Tempe and not by this Agreement.

Agreement

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE 1: DEFINITIONS

1. Definitions.

“Accessing Party” is defined in Section 16.1.

“Additions and Alterations” shall mean any improvements constructed by or on behalf of either party hereto after the Operations and Maintenance Effective Date, including, without limitation, additions and betterments, and any construction, reconstruction, modifications, and renewals thereof and additional facilities, but excluding maintenance items.

“Agreement” is defined in the preamble.

“Automatic Warning Devices” shall mean railroad-highway grade crossing traffic control devices referenced in the Manual on Uniform Traffic Control Devices, which are activated by the approach of a train or light rail vehicle, and may include, without limitation, any combination of flashing light signals, bells, automatic gates, control relays, and batteries, along with associated electrical circuitry, but excluding highway traffic signals and active advance warning devices.

“Central Phoenix/East Valley LRT” shall mean the light rail transit system to be constructed and operated on the LRT Property.

“Contractor’s Right of Entry Agreement” shall mean the right of entry agreement to be executed by the Valley Metro Rail Contractor, the form of which is attached hereto as Exhibit F.

“Customary Additives” shall mean elements of cost added to Invoices that comport with railroad industry practices for federally funded projects and generally are calculated as a percentage of direct labor costs and are intended to compensate for paid holidays, vacation and personal leave days, health and welfare benefits, payroll taxes and administrative and supervisory expenses that include direct and general overhead, and are subject to periodic changes, depending upon railroad industry practices.

“Facilities” shall mean all rails, fastenings, switches, switch mechanisms and frogs complete, ties, ballast, signals, traction power substations, overhead catenary systems including poles and guys, bumpers, roadbed, embankments, bridges, trestles, culverts, or any other structures or things necessary for the support thereof and, if any portion thereof is located in a thoroughfare, the term shall include pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, culverts, drainage facilities, Automatic Warning Devices, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance, and operation of any of the foregoing.

“FRA” shall mean the Federal Railroad Administration.

“Freight Rail Service” shall mean the common carrier freight rail operations conducted by UP or UP's tenants on the UP Property.

“FTA” shall mean the Federal Transit Administration.

“Invoice” is defined in Section 19.2.

“Losses” shall mean all losses, damages, claims, demands, costs, liabilities, judgments, fines, fees (including, without limitation, reasonable attorneys fees) and expenses (including, without limitation, costs of investigation, defense expenses at arbitration, trial or appeal and without institution of arbitration or suit, and, with respect to damage or destruction of property, cleanup, repair, and replacement expenses) of any nature arising from or in connection with death of or injury to persons, or damage to or destruction of property.

“LRT Property” is defined in Recital B; provided, that if Tempe or Valley Metro Rail shall transfer individual parcel(s) to third parties not affiliated with Tempe or Valley Metro Rail, and the transferred parcel(s) do not constitute a continuous corridor that is usable for transportation or recreation, such individual parcel(s) shall not be deemed “LRT Property” and shall not be subject to the provisions of this Agreement subsequent to any such transfer. Nothing in this Agreement shall prohibit Tempe or Valley Metro Rail from transferring any or all of the LRT Property to a third party affiliated with Tempe or Valley Metro Rail; provided, however, that such affiliated third party assignee shall consent in writing to be bound by the terms and conditions of this Agreement.

“Mutual Interest Additions and Alterations” shall mean Additions and Alterations constructed by, or on behalf of, one party, adjacent to the other party's property in the Parallel Corridor Segment and the design of which is likely to have a material effect on the safety of the other party's operations.

“Mutual Interest Improvements” shall mean (i) improvements located on, under, or over, the UP Property, or (ii) improvements located adjacent to the UP Property for which the design is likely to have a material effect on the safety of UP's operations.

“Operations and Maintenance Effective Date” shall mean the date of the written notice from Valley Metro Rail to UP, given pursuant to Section 8.3 hereof, stating that the Project Work is complete.

“Parallel Corridor Segment” shall mean the entire width of the parallel rail corridors shown on Exhibit C, and described on Exhibit D, exclusive of any individual parcel(s) transferred by UP, Tempe, or Valley Metro Rail, to third parties not affiliated with UP, Tempe, or Valley Metro Rail, which transferred parcel(s) do not constitute a continuous corridor that is usable for transportation or recreation.

“Plans and Specifications” shall have the meaning set forth in Section 3.1, below.

“Project” shall mean the construction of the Central Phoenix/East Valley LRT Facilities on or about the Parallel Corridor Segment.

“Project Work” shall mean all work (including, without limitation, utility relocations) that comprises the Project. Valley Metro Rail or the Valley Metro Rail Contractor shall perform Project Work, except for certain utility relocations that may be performed by the applicable utility company.

“Purchase and Sale Agreement” means that certain Purchase and Sale Agreement for the LRT Property made by and between Tempe and UP, of even date herewith.

“Related Agreements” shall mean the Purchase and Sale Agreement and all of the agreements defined in the Purchase and Sale Agreement as “Related Agreements.”

“Tempe” shall mean the City of Tempe, a municipal corporation created under the provisions of Title 9, Arizona Revised Statutes. The Charter of the City of Tempe was adopted in October 1964.

“UP” shall mean Union Pacific Railroad Company, a Delaware corporation.

“UP Property” shall mean all areas of the Parallel Corridor Segment which are (i) not designated as LRT Property, and (ii) retained under the ownership of UP or UP’s successors or assigns; provided, that if UP shall transfer individual parcel(s) to third parties not affiliated with UP, and the transferred parcel(s) do not constitute a continuous corridor that is usable for transportation or recreation, such individual parcel(s) shall not be deemed “UP Property” and shall not be subject to the provisions of this Agreement subsequent to any such transfer.

“Valley Metro Rail Contractor” shall mean the general contractor who performs Project Work for Valley Metro Rail. “Valley Metro Rail Contractor” shall also refer to subcontractors and suppliers, regardless of tier, provided that such subcontractors and suppliers shall not individually be required to execute a Contractor’s Right of Entry Agreement nor provide insurance to UP.

ARTICLE 2: CONSTRUCTION OF PROJECT

2. **Article 2 Effective Dates.** This Article 2 shall be effective on the date first above written and shall expire on the Operations and Maintenance Effective Date, unless sooner terminated as provided herein.

3. **Work To Be Completed.**

3.1 **Items to Be Constructed.** Valley Metro Rail will design and construct its light rail Facilities in the Parallel Corridor Segment in accordance with plans and specifications to be prepared by Valley Metro Rail and, to the extent set forth below, approved by UP (the “Plans and Specifications”). The parties agree that the Plans and Specifications shall (i) comply with all

applicable laws, rules, and regulations, and (ii) include installation of a fence, or other barrier, on the property line separating the UP Property and the LRT Property in the Parallel Corridor Segment south of the Salt River. In addition, the Plans and Specifications shall conform to UP's current published design standards, but only for Mutual Interest Improvements. UP has the right to review and approve the Plans and Specifications with respect to their consistency with the design standards set forth above.

3.2 **Work to be Performed by Valley Metro Rail and UP.**

3.2.1 The Valley Metro Rail Contractor shall be responsible for accomplishing all Project Work, at the sole cost and expense of Valley Metro Rail. Mutual Interest Improvements shall be accomplished to the reasonable satisfaction of UP, and UP's approval of such Mutual Interest Improvements shall not be unreasonably withheld, conditioned, or delayed.

3.2.2 UP shall be responsible for (a) relocating its signal box, currently located on the northeast side of the First Street crossing, to a location west of UP's freight tracks, and (b) installing a new Automatic Warning Device, and removing the existing Automatic Warning Device, on the east side of the First Street grade crossing in accordance with the Plans and Specifications. Valley Metro Rail will reimburse UP for the actual cost of performing such work.

3.2.3 UP will continue to be responsible for maintaining the Automatic Warning Devices on both sides of the First Street grade crossing until the Operations and Maintenance Effective Date, at which time the provisions of Section 13.2 will control.

3.3 **Construction Schedule; Rail Traffic Coordinators.** All work to be performed by UP hereunder shall be subject to a reasonable construction schedule to be agreed upon by UP and Valley Metro Rail. UP and Valley Metro Rail shall also reasonably determine the necessity for, and number of, rail traffic coordinators to accomplish Project Work.

4. **Access Rights.**

4.1 **Access to UP Property and LRT Property for Project Work and UP Signal Box Relocation.** Contemporaneously with the execution of this Agreement the parties shall execute the Joint Right of Entry License set forth in Exhibit E.

4.2 **Insurance.** Neither Valley Metro Rail nor any Valley Metro Rail Contractor shall begin any Project Work on Mutual Interest Improvements, and no contractor, subcontractor or supplier shall be permitted to enter upon property owned, controlled, or leased by UP, in connection with this Agreement, until certificates or policies of insurance in the amounts required by Subsection 7.2.3 and Section 7.5 of this Agreement have been delivered to UP. UP may reject any certificates or policies of insurance that do not comply with the requirements of Section 7.5.

5. **Construction and Supervision.**

5.1 **Plans and Specifications.** All Project Work on Mutual Interest Improvements shall be performed strictly in accordance with the Plans and Specifications, except that Valley Metro Rail shall have the right to make any changes to the Plans and Specifications that do not affect Mutual-Interest Improvements. Changes to the Plans and Specifications affecting Mutual Interest Improvements shall be subject to UP's approval which approval shall not be unreasonably withheld, conditioned, or delayed. Project Work on Mutual Interest Improvements not contemplated by the Plans and Specifications shall be performed only with the prior written consent of UP and Valley Metro Rail.

5.2 **Utilities.** Valley Metro Rail and UP agree that this Agreement shall not affect or authorize any change, modification, or relocation of existing utilities, including fiber optic lines. It shall be Valley Metro Rail's responsibility to coordinate the modification and/or relocation, as necessary, of all existing utilities, at its sole cost and expense. Utility relocation will be subject to UP's review and approval (which review and approval shall not be unreasonably withheld, conditioned, or delayed) according to published UP standards. UP's right of review and approval shall extend only to changes, modifications, or relocations of utilities that are located on (or relocated to) the UP Property or that materially affect UP operations. UP shall cooperate with any such utility relocations but shall not be required to take legal action against any utility company or otherwise enforce any agreements it may have with any utility company. Valley Metro Rail shall pay any and all expenses in connection with such utility relocations necessitated as a result of its Project, including without limitation, pipeline or fiber optic relocations.

6. **Methods and Procedures; Falsework/Shoring Plans and Calculations.** No later than thirty (30) calendar days prior to performing Project Work on Mutual Interest Improvements, the Valley Metro Rail Contractor shall submit proposed methods and procedures of performing such Project Work on Mutual Interest Improvements through Valley Metro Rail to UP for approval. The Valley Metro Rail Contractor shall also submit through Valley Metro Rail to UP for approval, prior to construction, plans and calculations certified by a professional engineer licensed by the State of Arizona for any falsework or shoring, if any, that provides lateral or subjacent support to the UP Property or UP's Facilities. UP shall have the right to approve whether the Valley Metro Rail Contractor's proposed methods and procedures, and falsework/shoring plans and calculations, are acceptable for the performance of such Project Work on Mutual Interest Improvements, which approval shall not be unreasonably withheld, conditioned, or delayed. Within thirty (30) calendar days after receipt of such methods and procedures, and falsework/shoring plans and calculations, UP shall advise Valley Metro Rail whether the same are satisfactory. In the event UP does not approve any of the foregoing, UP shall, within the same time period, provide written comments to Valley Metro Rail to assist the Valley Metro Rail Contractor in obtaining the approval of UP. Valley Metro Rail shall not allow the Valley Metro Rail Contractor to commence any Project Work on Mutual Interest Improvements until UP has approved all of the foregoing. All approvals referred to in this Section shall be in writing.

7. **Contractor Obligations and Activities.**

7.1 **Specifications for Construction.** Valley Metro Rail and UP agree that any contract awarded to the Valley Metro Rail Contractor shall include the following general information in the applicable Plans and Specifications:

7.1.1 The following provisions or Exhibits of this Agreement apply to the Valley Metro Rail Contractor and set forth the Valley Metro Rail Contractor's duties toward UP:

7.1.1.1 Sections 4.2, 6, 7.2, 7.3, 7.4, 7.6, 7.7; and

7.1.1.2 Exhibits F and G.

7.1.2 With respect to Mutual Interest Improvements only, the Valley Metro Rail Contractor's methods and procedures shall be provided to UP for review and approval pursuant to the provisions of Section 6. Prior to the commencement of Project Work on Mutual Interest Improvements, the Valley Metro Rail Contractor shall also submit through Valley Metro Rail to UP for review and approval pursuant to the provisions of Section 6, plans and calculations certified by a professional engineer licensed by the State of Arizona for falsework or shoring, if any, that provides lateral or subjacent support to the UP Property or UP's Facilities. None of the foregoing work on Mutual Interest Improvements shall be started until written approval (which shall not unreasonably be withheld, conditioned, or delayed) is obtained from UP. The Valley Metro Rail Contractor shall at all times keep covered all pits or openings near or under UP's trackage, except during the time required for actual operations in making such pits or openings and performing work therein. The provisions of this subsection shall not be construed as relieving the Valley Metro Rail Contractor of, or subjecting UP or Valley Metro Rail to, any responsibility or liability for any of Valley Metro Rail Contractor's operations, methods and procedures, or as constituting the Valley Metro Rail Contractor as a third-party beneficiary of this Agreement.

7.2 **Contractor's Covenants.** In addition to those provisions specified in Section 7.1 of this Agreement, any agreement entered into with the Valley Metro Rail Contractor to perform Project Work on Mutual Interest Improvements shall require such contractor to keep and perform the following covenants, conditions, and stipulations:

7.2.1 **Right of Entry.** Before entering on the UP Property to perform Project Work on Mutual Interest Improvements, the Valley Metro Rail Contractor shall be required to execute a Contractor's Right of Entry Agreement in substantially the same form as Exhibit F.

7.2.2 **Notice for Rail Traffic Coordination.** The Valley Metro Rail Contractor shall notify UP at least seven (7) calendar days in advance of commencing or discontinuing any operations that require rail traffic coordination services. Such notices shall be governed by the specific Contractor's Right of Entry Agreement entered into by the Valley Metro Rail Contractor with UP.

7.2.3 **Contractor's Insurance.** Valley Metro Rail shall obtain or cause the Valley Metro Rail Contractor to obtain, insurance of the kinds and amounts described in Contractor Insurance Requirements set forth in Schedule B-1 (attached to the Contractor's Right

of Entry Agreement) during the times any work is being performed on UP's property or within 50 feet of the centerline of UP's tracks.

7.2.4 **Crossings and Roadways.** The Valley Metro Rail Contractor shall not establish or use any new at-grade crossings of the Parallel Corridor Segment, without UP's prior written approval.

7.2.5 **Utilities.** The Valley Metro Rail Contractor shall observe all the requirements concerning utilities as described in the Plans and Specifications.

7.2.6 **Subcontractors.** The Valley Metro Rail Contractor shall require all of its subcontractors performing Project Work on Mutual Interest Improvements to be bound by the limitations and obligations of this Agreement. Only those subcontractors who obtain the insurance required in Subsection 7.2.3 above shall be authorized to perform Project Work on Mutual Interest Improvements, unless Valley Metro Rail or the Valley Metro Rail Contractor provides insurance covering the subcontractor.

7.3 **Advance Warning Devices.** Valley Metro Rail shall furnish, install, and maintain, at its sole cost and expense, all advance warning signs or barricades which may be necessary during the course of construction of the Project Work.

7.4 **Contractor's Defaults and Omissions.** Valley Metro Rail shall be responsible for the correction of defaults or omissions of the Valley Metro Rail Contractor for all Project Work on Mutual Interest Improvements. UP shall have the right to request that any employee of Valley Metro Rail, employee of the Valley Metro Rail Contractor, or any subcontractor, be removed from the Project for incompetence, neglect of duty, unsafe conduct, or misconduct if, in UP's reasonable judgment, the incompetence, neglect of duty, unsafe conduct, or misconduct may materially impair the safety of UP's operations, Facilities, or the UP Property. Concurrently with making any such request, UP shall provide Valley Metro Rail with documentary evidence, if available, of the allegations against such employee or subcontractor.

7.5 **Insurance.**

7.5.1 **Valley Metro Rail Insurance.**

7.5.1.1 Throughout the construction of the Project, Valley Metro Rail shall obtain and maintain, from an insurance company licensed to do business in Arizona, and possessing an A.M. Best's rating of B, or better, general liability insurance in the amount of Five Million Dollars (\$5,000,000.00) per occurrence, and Twenty Five Million Dollars (\$25,000,000.00) in the aggregate, with UP named as additional insured. The insurance may include a self-insured retention not to exceed Five Hundred Thousand Dollars (\$500,000.00). The insurance shall also include an endorsement deleting the exclusion for bodily injury or property damage arising out of construction or demolition operations within fifty (50) feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass, or crossing. Valley Metro Rail shall provide UP evidence of Valley Metro Rail's liability insurance coverage at least ten (10) working days prior to the date of commencement of

such construction and shall provide evidence of its continued insurance coverage at each subsequent renewal. Valley Metro Rail's failure to provide such evidence within twenty (20) working days after receipt of written notice from UP, shall entitle UP, at its sole discretion (but not a requirement), to purchase such liability insurance, and Valley Metro Rail shall reimburse UP the cost of such liability insurance within thirty (30) working days of its receipt of a bill therefor.

7.5.1.2 Provided Valley Metro Rail maintains the insurance above-described, in the event of any loss or damage to any persons or property suffered by any party to this Agreement or for which any party to this Agreement may be liable, that party shall first proceed directly against available insurance coverage, and shall make no claim against any other party to this Agreement for such loss or damage unless it is determined that insurance coverage has been exhausted or is not available.

7.5.1.3 The insurance policies described in this Section 7.5 shall be primary and not contributory, and shall release UP as to payments of any earned premium. All insurance certificates provided by Valley Metro Rail must demonstrate compliance with this Section 7.5 and must provide that such insurance may not be canceled, amended or allowed to lapse until the expiration of at least thirty (30) calendar days' advance written notice to UP. Prior to any entry upon UP's Property, Valley Metro Rail shall furnish to UP for approval a Certificate of Insurance, or other reasonably satisfactory evidence that all the insurance which Valley Metro Rail is obligated to furnish under the foregoing provisions has been obtained and is being maintained.

7.5.1.4 During the construction period only, the insurance obligations set forth in Subsection 7.2.3 and this Section 7.5 may be satisfied by any combination of insurance policies provided by Valley Metro Rail and/or the Valley Metro Rail Contractor as long as the aggregate policy limits of the combined policies meet the requirements set forth in Subsection 7.5.1.1 and Subsection 7.2.3, above, and the policies name both Valley Metro Rail and UP as additional insureds. In addition, Valley Metro Rail's Contractor shall provide all of the insurance required by the insurance provisions of the Contractor's Right of Entry Agreement, except that Valley Metro Rail may, at its option, provide the Railroad Protective Liability Insurance required thereunder and, in that event, the Valley Metro Rail Contractor shall not be required to provide Railroad Protective Liability Insurance.

7.5.2 **UP Insurance.**

7.5.2.1 UP maintains, and shall continue to maintain, a catastrophic risk management program, allowing for its diverse risk exposures and financial condition, and in keeping with risks assumed by corporations of established size and reputation and consistent with programs of other Class I railroads. UP shall maintain at all times this Agreement is in effect, and at its own cost and expense, insurance coverage as is customary under its established risk management program. UP warrants and agrees that said insurance (or self insurance) coverage is, and shall be, at least as comprehensive in scope and amount as the insurance required to be carried by Valley Metro Rail under this Agreement.

7.5.2.2 Within ten (10) working days prior to the Operations and Maintenance Effective Date, UP shall provide Valley Metro Rail with certificates of insurance (or its standard self insurance letter) evidencing the insurance required by Subsection 7.5.2.1.

7.6 **Clearances.** Valley Metro Rail shall comply with the clearances contained in the Plans and Specifications, which clearances shall be in accordance with all applicable State and Federal Railroad Administration regulations.

7.7 **Contractor Contracts.** Upon receipt of UP's written request therefor, Valley Metro Rail shall submit to UP copies of all agreements entered into with a contractor to perform Project Work on Mutual Interest Improvements.

8. **Termination.**

8.1 **Termination upon Abandonment of Project.** In the event Valley Metro Rail elects to abandon construction of the Project, Valley Metro Rail may terminate this Agreement upon giving written notice of termination to UP. If Valley Metro Rail terminates this Agreement pursuant to this Section, Valley Metro Rail shall reimburse UP for (i) any cost reasonably incurred by UP in connection with the Project prior to such termination, or (ii) if UP's facilities have been damaged in connection with the Project, any cost reasonably required to restore UP facilities to its functional condition prior to such damage.

8.2 **Restoration of UP Property.** In the event this Agreement is terminated prior to the completion of the Project Work, or the Project Work is suspended for more than twelve (12) months, Valley Metro Rail at its sole cost and expense, shall ensure that the UP Property is restored to its condition prior to the commencement of construction of the Project.

8.3 **Completion of Project Work.** After substantial completion of the Project Work, Valley Metro Rail shall promptly give written notice thereof to UP. UP and Valley Metro Rail shall meet to walk through and inspect the Project improvements within ten (10) calendar days after such notice is given. Following such inspection of the Project improvements, Valley Metro Rail shall give UP final notice of the completion of the Project Work and the commencement of the Operations and Maintenance Effective Date. Unless sooner terminated as provided herein, this Article 2 shall expire on the date such notice is given.

9. **Representatives.** Valley Metro Rail's Deputy Executive Director of Design and Construction or his or her designee(s), shall be the principal representative of Valley Metro Rail in all matters relating to this Article 2. UP's Construction Engineer, or his or her designee(s), shall be the principal representative of UP in all matters relating to this Article 2.

10. **Testing During Construction Period.** Valley Metro Rail may test its Facilities during construction of the Project, including operating light rail vehicles on its tracks, carrying employees of Valley Metro Rail, the Valley Metro Rail Contractor and any subcontractors. However, Valley Metro Rail shall not operate light rail vehicles carrying any other persons in the Parallel Corridor Segment prior to the Operations and Maintenance Effective Date.

**ARTICLE 3: OPERATIONS AND MAINTENANCE FOLLOWING
CONSTRUCTION OF PROJECT**

11. **Operations and Maintenance Effective Date.** This Article 3 shall become effective only on and after the Operations and Maintenance Effective Date.

12. **Freight Rail Service; Transit Service.**

12.1 **UP's Rights and Obligations.** UP shall continue to have the exclusive right and obligation to provide, by itself or through UP's designee, Freight Rail Service on and over the UP Property.

12.2 UP shall have the right to construct, maintain, replace, remove, use and operate new industry tracks across the LRT Property as may be required to fulfill UP's common carrier obligation to shippers and receivers of freight on the Phoenix Subdivision, but only on the following terms and conditions:

12.2.1 In the event UP desires to construct any new industry tracks on the Phoenix Subdivision that would cross the LRT Property, UP shall obtain Valley Metro Rail's prior written consent to the design of the proposed improvement, which shall not be unreasonably withheld, conditioned or delayed; provided that Valley Metro Rail may require in its sole discretion, as a condition to its consent, the design and construction of a grade-separated crossing of the light rail tracks to minimize interference with light rail operations, at the sole cost of entities other than Valley Metro Rail.

12.2.2 In the event the construction of any new industry tracks across, under, or over, the LRT Property reasonably necessitates the construction of new facilities, or modifications to, or relocations of Valley Metro Rail's existing facilities, such construction, modifications and/or relocations shall be at the expense of entities other than Valley Metro Rail.

12.2.3 If any new industry tracks are permitted to cross the light rail tracks at-grade, the operation thereof shall only take place in accordance with such standard operating procedures as Valley Metro Rail may adopt from time to time to minimize interference with light rail operations.

12.2.4 UP shall, at Valley Metro Rail's request and at the expense of entities other than Valley Metro Rail, relocate or grade-separate any new industry tracks crossing the LRT Property as reasonably necessary for Valley Metro Rail's light rail operations and restore Valley Metro Rail's facilities and transit system to their pre-existing condition.

12.3 Valley Metro Rail's Rights and Obligations. Valley Metro Rail shall have the exclusive right to provide, by itself or through Valley Metro Rail's designee, transit service on

and over the LRT Property. Nothing in this Agreement shall prevent or prohibit UP from operating or from permitting other qualified entities to operate passenger service on and over the UP Property or the Phoenix Subdivision.

13. **Maintenance, Repair, and Replacement Obligations.**

13.1 **General Maintenance, Repair, and Replacement Obligations.** The parties shall maintain, repair, and replace (as necessary) their respective properties and improvements located thereon in accordance with all applicable laws, rules, and regulations, and in a condition reasonably suitable for the parties' intended uses of the Parallel Corridor Segment.

13.2 **Maintenance and Repair of Automatic Warning Devices.** UP shall maintain, repair, and replace as necessary, Automatic Warning Devices on the UP Property and Valley Metro Rail shall maintain, repair, and replace as necessary, Automatic Warning Devices on the LRT Property at the First Street grade crossing of the Parallel Corridor Segment. Highway Traffic Signals and active advance warning devices interconnected with the Automatic Warning Devices at the First Street crossing shall be maintained, repaired, and replaced as necessary by Valley Metro Rail at its sole cost and expense. If the track of either party is removed, relocated, or grade-separated, so that only the track of the other party remains within the First Street grade crossing, the ownership and responsibility for maintenance of Automatic Warning Devices on both sides of the grade crossing will be transferred to the party whose track remains within the grade crossing. The track circuits and control apparatus that were connected to the removed/relocated track shall be removed and retained by the owner of the removed/relocated track.

13.3 **Remedies.**

13.3.1 In the event the party responsible for the maintenance of any item (the "Maintaining Party") fails to perform its maintenance obligations under this Agreement, and such failure results in a material danger to human health or safety, or to property, the other party hereto may perform such obligations immediately upon notifying the Maintaining Party by telephone at the number set forth below, and shall be entitled to full reimbursement for costs and expenses reasonably incurred from the Maintaining Party within thirty (30) calendar days after submission of a written Invoice therefor.

13.3.2 In the event the Maintaining Party discovers any malfunction of, or damage to, Automatic Warning Devices, the Maintaining Party shall promptly notify the other party by telephone at the telephone number set forth below. The parties shall follow their respective usual response practices in the event of any malfunction of, or damage to, Automatic Warning Devices.

Valley Metro Rail Contact: _____

UP Telephone Contact: _____

14. **Construction of Additions and Alterations.** The design and construction of any Additions and Alterations on the parties' respective properties in the Parallel Corridor Segment shall comply with all applicable laws, rules, and regulations. The parties agree to reasonably notify and consult with one another concerning the design and construction of any Mutual Interest Additions and Alterations.

15. **Operations.**

15.1 **UP's Operations.** UP shall have exclusive authority to manage, direct, and control all activities on the UP Property, including, without limitation, the operations of all trains, locomotives, rail cars, and rail equipment, and the movement and speed of the same on the UP Property. Valley Metro Rail shall not have any right to enter upon or use the UP Property, except as expressly set forth in this Agreement.

15.2 **Valley Metro Rail's Operations.** Valley Metro Rail shall have exclusive authority to manage, direct, and control all activities on the LRT Property, including, without limitation, the operations and maintenance of all trains, rail cars, and rail equipment, and the movement and speed of the same on the LRT Property. UP shall not have any right to enter upon or use the LRT Property, except as expressly set forth in this Agreement.

16. **Reciprocal Access and Notice Rights.**

16.1 **Permitted Reasons for Access.** Each party hereto (the "Accessing Party") shall have the right to enter upon the property of the other in the Parallel Corridor Segment for the following reasons only:

16.1.1 Each party may enter upon the property of the other party for the purpose of performing maintenance, repair, or replacement, of Automatic Warning Devices, and associated equipment, at, and on each side of the First Street crossing of the Parallel Corridor Segment.

16.1.2 Valley Metro Rail may enter the UP Property if necessary to make emergency repairs to LRT equipment. Each Accessing Party may enter upon the other party's property for purposes of performing any emergency maintenance, repair, or rail traffic coordination pursuant to Section 13.3. Entry under this subsection does not require any prior notice.

16.1.3 In the event of an emergency of any kind, the Accessing Party may enter upon the other party's property (i) to warn the other party's trains by any reasonable means, including, without limitation, use of rail traffic coordinators or (ii) in the event of a wreck or derailment of the Accessing Party's train or equipment, to clear the train, equipment, or other debris from the other party's property. Entry under this subsection does not require any prior notice, however the Accessing Party shall notify the other party by telephone as soon as possible.

16.1.4 Security personnel of either party in pursuit of a criminal suspect may enter upon the other party's property for the purpose of apprehending the suspect. Entry under this subsection does not require any prior notice.

16.2 **First Street Crossing Signals.** Each party hereto grants to the other an irrevocable license upon, over, under and across those portions of their respective properties located at the First Street crossing for the construction, operation, maintenance, repair, renewal and replacement of their respective railroad/light rail crossing signal connection cables, together with the right to connect such cables into their respective crossing signal control housings.

16.3 **Compliance with Regulations.** When accessing the other party's property, or approaching the other party's tracks, each party shall comply with all applicable rules and regulations of the FRA and/or State Safety Oversight Agency (Arizona Department of Transportation).

17. **Liability.**

17.1 **Assumption of Responsibility.**

17.1.1 Each of the parties hereto shall assume, bear, and pay any and all Losses allocated to it as the responsible party under the terms of this Section 17; provided, that this Section 17 pertains only to Losses proximately caused by incidents occurring on, or adjacent to, the Parallel Corridor Segment, and arising out of the parties' operations on the Parallel Corridor Segment. Except as otherwise expressly provided in Subsections 17.2.3.1 and 17.2.5, and Section 17.3, the responsibility for Losses allocated to each party under this Section 17 is without respect to fault, failure, negligence, misconduct, malfeasance, or misfeasance of any party or its employees, agents, or servants.

17.1.2 All costs and expenses incurred in connection with the investigation, adjustment, and defense of any claim or suit shall be included as part of the Loss for which responsibility is assumed under the terms of this Section 17, including salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either party engaged directly in such work and a reasonable amount of allocated salaries and wages of employees providing support services to the employees so engaged directly in such work.

17.2 **Allocation of Responsibilities.**

17.2.1 **Invitee of Either Party.** Losses arising out of personal injury (including bodily injury and death) to, or property damage suffered by, an invitee of either party shall be the responsibility of and borne and paid solely by that party regardless of the cause of such Loss or the fault of either party or whose train or equipment was involved, except as provided in Section 17.3 below. Consultants and contractors of a party, and any person who is on a train or equipment operated by or for the account of a party (other than an employee of a party engaged in performing duties for that party), shall rebuttably be presumed to be an invitee of that party.

All persons at or adjacent to an Valley Metro Rail passenger station or Valley Metro Rail loading platform shall rebuttably be presumed to be invitees of Valley Metro Rail (other than employees, contractors and consultants, including employees of such contractors, of UP or UP's tenant, engaged in performing duties for UP or UP's tenant).

17.2.2 Employees in Course of Employment. Losses arising out of personal injury (including bodily injury and death) to, or property damage suffered by, any employee of either party which occurs during the course of employment or while traveling to or from employment (an "employee") shall be the responsibility of and borne solely by the party employing such employee, except as provided in Section 17.3.

17.2.3 Persons Other Than Invitees or Employees. Except as provided in Section 17.3, Losses arising out of personal injury (including bodily injury and death) to, or property damage suffered by, (i) any person who is not an invitee or employee of Valley Metro Rail or UP (including, without limitation, persons using vehicular and pedestrian crossings and trespassers), or (ii) any person who is an employee of Valley Metro Rail or UP but is not acting in the course of his or her employment at the time of injury or damage, shall be the responsibility of and borne and paid by the parties as follows:

17.2.3.1 When trains or equipment of both Valley Metro Rail and UP are involved in the incident giving rise to the injury or damage, by both parties in proportion to their relative degrees of fault.

17.2.3.2 When trains or equipment of only one party are involved in the incident giving rise to the injury or damage, by that party alone.

17.2.3.3 When no train or equipment of either party is involved in the incident giving rise to the injury or damage, by the party on whose property the incident occurred.

17.2.4 Property of the Parties. Losses arising out of casualty losses to property owned by either party shall be the responsibility of and paid by the parties as follows regardless of the cause of such Loss or the fault of either party, except as provided in Subsection 17.2.5, and Section 17.3, below:

17.2.4.1 Loss to trains, equipment, and other property owned by Valley Metro Rail shall be the responsibility of Valley Metro Rail and borne by it.

17.2.4.2 Loss to trains, equipment and other property owned by, and freight transported by, UP shall be the responsibility of UP and borne by it.

17.2.4.3 Loss to property jointly owned and/or used by both parties shall be the responsibility of and borne and paid by the parties as follows:

17.2.4.3.1 When trains or equipment of both parties were involved in the incident giving rise to the Loss, by both parties equally.

17.2.4.3.2 When trains or equipment of only one party were involved in the incident giving rise to the Loss, by that party alone.

17.2.4.3.3 When no train or equipment of either party was involved in the incident giving rise to the Loss: (i) by the party which owns the property involved, if the property is owned by only one party but used by both, or (ii) by both parties equally, if the property is jointly owned.

17.2.5 Hazardous Materials. Except as provided in Section 17.3, Losses arising out of the release of hazardous materials shall be the responsibility of and borne by the party who transported the hazardous materials unless trains and equipment of both parties were involved, in which case the parties shall bear the Loss in proportion to their relative degrees of fault.

17.3 Limitations on Indemnification. The provisions of this Section 17.3 shall apply notwithstanding the provisions of Section 18 below. If any of the provisions of Section 17.2 would otherwise be prohibited by or unenforceable under the laws of the State of Arizona (including a determination that indemnification under the circumstances involved is against the public policy of the state), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Without limitation, if it is determined that any law or public policy of the State of Arizona prohibits the indemnification of a party for its own sole negligence in any instance covered by the provisions of Section 17.2, those provisions shall be deemed to exclude indemnification for such party's sole negligence but to permit full indemnification, as specified in Section 17.2, if both parties were negligent. In the case of any Loss for which the provisions of this Section 17.3 would prevent the indemnification of a party, such party shall be responsible for and bear such Loss.

17.4 Scope of Indemnification. In any case where a party is required under the provisions of this Section 17 to bear a Loss, it shall pay, satisfy, and discharge such Loss and all judgments that may be rendered by reason thereof and all costs, charges, and expenses incident thereto, and such party shall forever indemnify, defend, and hold harmless the other party and its commissioners, directors, officers, agents, employees, shareholders, parent corporations and affiliated companies, or governmental entities from, against, and with respect to any and all Losses which arise out of or result from the incident giving rise thereto. It is the intent of the parties that the indemnification provisions of this Section 17 shall apply to both the passive negligence and the active negligence of an indemnified party.

17.5 Procedure.

17.5.1 If any claim or demand (short of a lawsuit) shall be asserted by any person against an indemnified party under this Section 17, the indemnified party shall, within thirty (30) calendar days after notice of such claim or demand, cause written notice thereof to be given to the indemnifying party, provided that failure to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to the indemnified party under this Section 17, except to the extent that the rights of the indemnifying party are in fact prejudiced by

such failure. If any such claim or demand shall be brought against the indemnified party and it shall have given notice thereof to the indemnifying party, the indemnifying party shall have the right, at its sole cost and expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle, any such claim or demand, and the parties hereto agree to cooperate fully with each other in connection with any such defense, negotiation, or settlement. In any event, the indemnified party shall not make any settlement of any claims or demands which might give rise to liability on the part of the indemnifying party under this Section 17 without the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld, conditioned, or delayed. If any claim or demand relates to a matter for which the parties, under the terms of Section 17.2, are to share a Loss equally or in proportion to their relative degrees of fault, each party shall be entitled to select its own counsel and defend itself against the claim or demand at its sole cost and expense, and neither party shall make any settlement of any such claim or demand without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed.

17.5.2 In the event any lawsuit is commenced against either party hereto for or on account of any Loss for which the other party may be solely or jointly liable under this Agreement, the party thus sued shall give the other party timely written notice of the pendency of such action, and thereupon the party so notified may assume or join in the defense thereof, and if the party so notified is liable therefor under this Agreement, to the extent of such liability, such party shall defend, indemnify, and hold harmless the party so sued from all Loss in accordance with the liability allocations set forth in this Agreement. Neither party shall be bound by any judgment against the other party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified and the opportunity to assume or join in the defense of the action has been afforded, the party so notified shall, to the extent of its liability under this Agreement, be bound by the final judgment of the court in such action.

17.5.3 Subject to the provisions of Subsection 17.5.1, on each occasion that the indemnified party shall be entitled to indemnification or reimbursement under this Section 17, the indemnifying party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party shall be entitled to indemnification under this Section 17 and the indemnifying party shall not elect to control any legal proceeding in connection therewith, the indemnifying party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expenses arising as a result of such proceeding.

17.6 **Compliance With Laws.** Both parties shall comply with all applicable federal, state, and local laws and regulations, and all applicable rules, regulations, or orders promulgated by any court, agency, municipality, board, or commission. If any failure of either party to comply with such laws, regulations, rules, or orders in respect to that party's use of the Parallel Corridor Segment results in any fine, penalty, cost, or charge being assessed against the other party, or any Loss, the party which failed to comply agrees to reimburse promptly and indemnify, protect, defend (with counsel reasonably acceptable to the indemnified party), and hold harmless the other party for such amount.

17.7 **Delay/Interruption of Service.** Valley Metro Rail and UP shall not be held liable for any delay or interruption to the trains, locomotives, or vehicles of the other party.

18. **Insurance.**

18.1 **Valley Metro Rail Insurance.**

18.1.1 Valley Metro Rail shall obtain and maintain, or cause to be obtained and maintained, general liability insurance for the liability assumed under this Agreement, as further specified in Subsection 18.1.2, with minimum limits of One Hundred Million Dollars (\$100,000,000.00) per occurrence and in the aggregate. Insurance shall be placed with a company having an A.M. Best's rating of at least B, or equivalent, and which is licensed to write insurance coverage in the State of Arizona. Valley Metro Rail may self-insure to an amount not to exceed Five Million Dollars (\$5,000,000.00), provided that the total coverage limits (self insurance plus excess liability insurance) are at least One Hundred Million Dollars (\$100,000,000.00) per occurrence. The foregoing policy limits may be adjusted by the parties to reflect industry standards, liability claim trends and market conditions, but in no event shall the total coverage ever be less than One Hundred Million Dollars (\$100,000,000.00).

18.1.2 Valley Metro Rail's insurance must be at least as broad as the current ISO Commercial General Liability Policy (CG 00 01) protecting insured parties against claims for bodily injury, death, property damage, explosion, collapse and underground, personal and advertising injury, and products-completed operations, with respect to all operations of Valley Metro Rail. The insurance shall include blanket contractual coverage. The insurance shall also include an endorsement deleting the exclusion for bodily injury or property damage arising out of construction or demolition operations within fifty (50) feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass, or crossing. The insurance will also include coverage for punitive damages, but only to the extent permitted under Arizona law. Each policy obtained by Valley Metro Rail shall be endorsed to include UP as an additional insured.

18.1.3 Valley Metro Rail's insurance shall be primary with respect to its obligation under this Agreement and with respect to the interest of UP as an additional insured. Any other insurance maintained by UP shall be excess of the coverage herein defined as primary and shall not contribute with it.

18.1.4 Unless otherwise agreed by Valley Metro Rail and UP, Valley Metro Rail's insurance shall be maintained for the full term of this Agreement and shall not be permitted to expire or be canceled or materially changed.

18.1.5 Within ten (10) calendar days prior to the Operations and Maintenance Effective Date, Valley Metro Rail shall provide UP with certificates of insurance evidencing the insurance required by this Section. Certificates of insurance shall be issued on the ACORD or equivalent form.

18.2 **UP Insurance.**

18.2.1 UP maintains, and shall continue to maintain, a catastrophic risk management program, allowing for its diverse risk exposures and financial condition, and in keeping with risks assumed by corporations of established size and reputation and consistent with programs of other Class I railroads. UP shall maintain at all times this Agreement is in effect, and at its own cost and expense, insurance coverage (or self insurance) as is customary under its established risk management program. UP warrants and agrees that said insurance coverage (or self insurance) is, and shall be, at least as comprehensive in scope and amount as the insurance required to be carried by Valley Metro Rail under this Agreement.

18.2.2 Within ten (10) calendar days prior to the Operations and Maintenance Effective Date, UP shall provide Valley Metro Rail with its standard self insurance letter, or certificates of insurance evidencing the insurance required by this Subsection.

18.3 **Failure to Maintain Insurance.** A failure of either party to maintain the insurance required by this Section 18 shall not relieve such party of any of its liabilities or obligations under this Agreement. No provision with respect to insurance shall limit the extent of the liability provisions of this Agreement.

ARTICLE 4: MISCELLANEOUS PROVISIONS

19. **Compensation and Billing.**

19.1 Except as otherwise specifically provided in this Agreement, UP and Valley Metro Rail shall have no obligation to pay or otherwise compensate each other in connection with this Agreement.

19.2 Invoices submitted to the parties hereunder ("Invoices") must be itemized with a detailed description of the work performed, the date of such work, the person performing such work, the time expended and the associated hourly billing rate or charge for such work, any reimbursable expenses (including, without limitation, the cost of materials used) incurred in the performance of the work, and customary additives. Invoices shall also include any other clarifying information reasonably requested by the other party. The party requesting reimbursement shall certify that it has actually incurred the expenses set out in its Invoice. Invoices for reimbursable expenses may not exceed the out-of-pocket expense for such items. Invoices shall be paid within thirty (30) calendar days after receipt thereof by the payor. If a party disputes any items on an Invoice, that party may deduct the disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deductions, if any, shall be documented to the other party within thirty (30) calendar days after receipt of the Invoice. Once documentation is given for the disputed amounts, and accepted by the paying party, the paying party shall pay the disputed amounts within fifteen (15) calendar days after receipt of the documentation. No Invoice shall be submitted later than one hundred twenty (120) calendar days after the last day of the calendar month in which the reimbursable expense or cost covered thereby is incurred.

19.3 Upon request, a party disputing the accuracy of any Invoice shall be entitled to receive from the invoicing party copies of such supporting documentation and/or records as are kept in the ordinary course of the invoicing party's business and which are reasonably necessary to verify the accuracy of the Invoice as rendered.

20. **Force Majeure.** Each party shall be excused from the performance of any of its obligations hereunder, except obligations involving the payment of money to the other party, during the time when such nonperformance is caused by fire, earthquake, flood, explosion, wreck, casualty, labor strike, unavoidable accident, riot, insurrection, civil disturbance, act of public enemy, embargo, war, acts of terrorism, extreme and violent weather conditions, inability to obtain labor, materials or supplies, acts or omissions of the other party, or any other similar cause, all of which must be beyond the non-performing party's reasonable control, provided the non-performing party gives notice to the other party within ten (10) calendar days following the non-performing party's knowledge of such event, setting forth the facts giving rise to such non-performance and the number of days of delay expected to be caused thereby.

21. **Notices.** Except as otherwise expressly provided in this Agreement, all notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below, or (ii) at the earlier of actual receipt or the second business day following deposit in the United States mail, postage prepaid. Notices and other communications shall be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, its telecopy number, or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Section.

Valley Metro Rail: [_____]

With a copy to: Valley Metro Rail Attorney
[_____]

UP: Vice President - Engineering
1416 Dodge Street, Room 1030
Omaha, NE 68179
Telecopy:(402) 271-6674

With a copy to: Vice President - Law
1416 Dodge Street, Room 830
Omaha, NE 68179
Telecopy:(402) 271-7107

22. **Headings.** The section and subsection headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement.

23. **Integration, Amendment and Waiver.** This Agreement is the entire agreement, and supersedes all prior and contemporaneous agreements, representations, and understandings, of the parties concerning the subject matter hereof. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both of the parties. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
24. **Counterparts.** This Agreement may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.
25. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona.
26. **Time of Essence.** Time is of the essence of each and every provision of this Agreement.
27. **Not for the Benefit of Others.** This Agreement and each and every provision herein is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein shall be construed to create or increase any right in any third party to recover by way of damages or otherwise against either of the parties hereto.
28. **Attorney's Fees.** If any legal action or any arbitration or other proceeding is brought for the enforcement or interpretation of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs in connection with that action or proceeding, in addition to any other relief to which it or they may be entitled.
29. **FTA Requirements.** Valley Metro Rail may, at its option, use funds granted by the FTA to pay various financial obligations arising under this Agreement. If FTA requires any change to this Agreement, both parties agree to negotiate reasonably an amendment to this Agreement that shall satisfy the requirements of the FTA. If such changes cause an increase or decrease in expenses incurred by UP, then any compensation or reimbursement to be paid to UP shall be equitably adjusted.
30. **Exhibits.** Exhibits A-G attached hereto are incorporated herein by this reference.
31. **Regulatory Requirements.** Both parties shall reasonably cooperate to ensure compliance with all governmental requirements.
32. **Termination.** This Agreement is subject to termination pursuant to A.R.S. Section 38-511.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

VALLEY METRO RAIL, INC.

By: _____
Name: [_____]
Title: [_____]

Date: _____

APPROVED AS TO FORM:

By: _____
Name: [_____]
Title: Valley Metro Rail Attorney

Date: _____

**UNION PACIFIC
RAILROAD COMPANY**

By: _____
Name: [_____]
Title: [_____]

Date: _____

By: _____
Name: [_____]
Title: [_____]

Date: _____

EXHIBIT “A” TO EXHIBIT F
DEPICTION OF LRT PROPERTY

EXHIBIT “B” TO EXHIBIT F
DESCRIPTION OF LRT PROPERTY

EXHIBIT “C” TO EXHIBIT F
DEPICTION OF PARALLEL CORRIDOR SEGMENT

EXHIBIT “D” TO EXHIBIT F
DESCRIPTION OF PARALLEL CORRIDOR SEGMENT

EXHIBIT “E” TO EXHIBIT F
JOINT RIGHT OF ENTRY LICENSE

EXHIBIT “F” TO EXHIBIT F
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

EXHIBIT "G" TO EXHIBIT F

STANDARD TERMS AND CONDITIONS

1. ACCOUNTING RECORDS

UP shall maintain all books, documents, papers, accounting records and other evidence pertaining to the performance and costs of this Agreement. UP's accounting systems shall conform to generally accepted accounting principles, and all records shall provide a breakdown of total costs charged to this Agreement, including properly executed payrolls, time records, invoices and vouchers. UP shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by project line item. UP's accounting system shall conform to generally accepted accounting principles, enable the determination of incurred costs at interim points of completion, and provide support for invoices. All accounting records and other supporting papers shall be maintained for a minimum of three years from the date of final payment, and shall be open to inspection and audit by representatives from Valley Metro Rail, the State of Arizona, Federal Transit Administration, or any duly authorized representative of the state or federal government. UP shall make such records and materials available at its office at all reasonable times and copies thereof shall be furnished upon request.

2. ALLOWABLE COSTS

UP agrees to comply with federal procedures in accordance with the following: Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments, Office of Management and Budget Circular A-102, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments. Reimbursable costs for travel expenses shall comply with UP's internal rules, regulations and policies as are applicable to work funded by UP.

3. EMPLOYMENT BENEFITS

Responsibility for payment due by Valley Metro Rail shall be limited to the compensation set forth in the Agreement. Valley Metro Rail shall not be responsible for providing any protective insurance coverage or employment benefit payable to employees of UP that is based upon the relationship of employer and employee.

4. INDEPENDENT CONTRACTOR

In providing the services as set forth in this Agreement, UP shall act as an independent contractor and not as an employee of Valley Metro Rail. In accordance with that relationship, UP shall assume all responsibility for federal and state income tax withholding, FICA, and any other deductions from income that UP is properly required to

make as an independent contractor. UP shall assume all responsibility for payment of wages to its employees and for federal and state income tax withholding.

5. AUTHORITY

Each of the signatories to the Agreement represent that he or she is authorized to sign the Agreement on behalf of such party and that all approvals, resolutions and consents which must be obtained to bind such party have been obtained and that no further approvals, acts or consents are required to bind such party to the Agreement.